

Collected Papers on Land Tenures and Uses & Trusts

Evidence:

*The laws that are hidden and then taken as assumed
keeping one subject to a secret trust by feoffment -
a land trust created at birth*

How one becomes subject to Uses and Trusts

How one removes being subject to Uses and Trusts

Never become a subject by ignorance again!

Ignorance of the law is no excuse!

First Edition

2018

Revised

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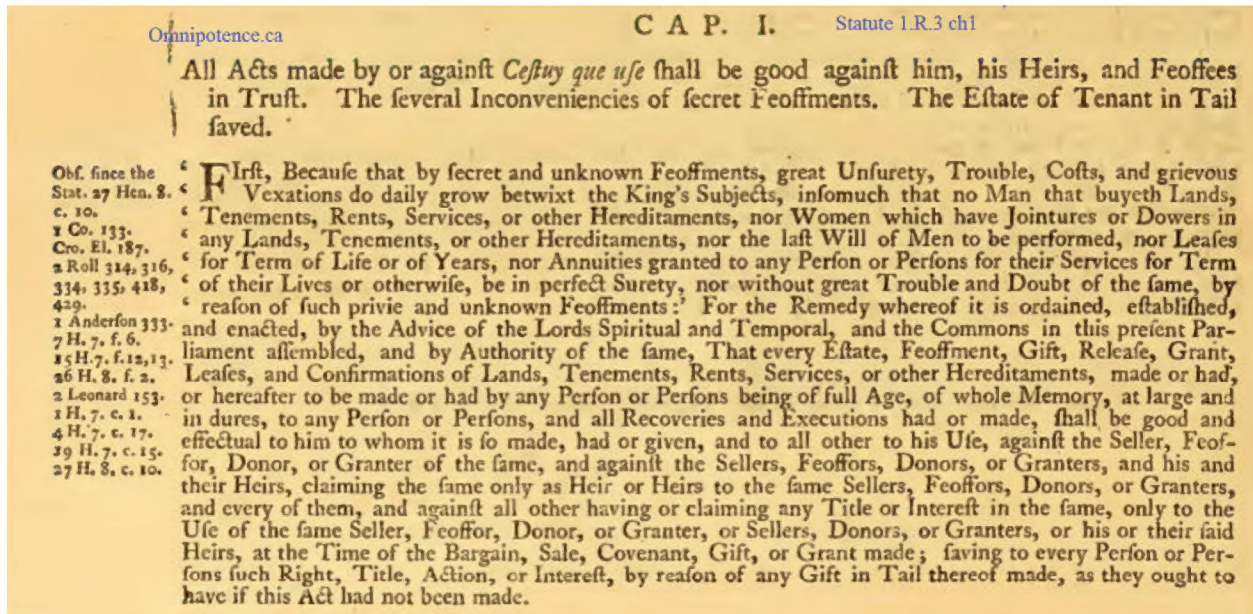
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PREFACE

1.R.3 - 1st Statute King Richard 3rd



A custom has grown out of uses & trusts and land tenures that is now far overlooked by the majority, including those within the legal system of lawyers. One of the most crucial things in law is now assumed. The cause and effect of land tenures along with how uses & trust behave have grown to become one of the most important foundational blocks of English Law; having been continuously expanded on since before the Roman era.

The first edition is this introductory PDF which discusses an upcoming course. This course covers: how one becomes the subject to these laws through tenures, how to remove being subject and how to make sure one never becomes subject (due to tacit agreements and acceptance that one could not recognize), through ignorance, ever again.

This introductory PDF and Successors.ca courses cover very specific areas of law, for a very specific capacity in law, to help one see how to claim the estate in trust; BUT one must FULLY understand this in depth BEFORE trying to claim the estate in trust. This is due to the capacities and laws required that enables one to prove they are the rightful owner and not a trustee, and to prove they understand the difference between each

(which is simple once understood but difficult initially to understand). This book will only have the required information to prove that there is in fact a land trust i.e the cestui que trust, which you have the right to terminate, supported by the acts that make you subject, plus “The Proof” of the right to terminate this agreement, and the additional acts that one will use to get their estate back. In essence, if you understand all the areas of law, and how they work as a whole, then this book, coupled with the proof, will be all you need (you may need to source a few other bits from the jurisdiction you will be claiming in), yet only you will be able to rationalize when you are ready by truly understand the rules of law.

This introductory PDF is being provided to give one the actual proof, supported by the written facts of law, in order to show that English law is not a fraud and that everyone has a contract that they can terminate, if they do not agree with it. One must be able to self-sustain oneself outside the group of equity. They must prove that they are not reliant on the services provided by the common law and equity contract/trust. Equity laws only apply to individuals, within the uses & trust jurisdiction, who are operating as fee simple (life tenant). Fee simple capacities are only within land territories, based on common law, which have adopted municipal law and includes all those capacities within the jurisdiction of these English law territories that have essentially descended in title.

English law is all trust law. Common law is the common law of the group. There are many assumptions on the very basics of the English law that are incorrect. These basics, once corrected, will make one’s journey into seeing the truth much easier. There is also nothing illegal about English law. Everyone within English law grants a land trust, at birth, that must be terminated, and if not terminated then fee simple and acting as cestui que USE applies. Many aspects of the cestui que trust, cestui que use and cestui que vie are also incorrect and these courses will supply the required detailed information for you to read and learn, for yourself, so that you can establish the truth, and act upon it if you so wish.

Within this introductory PDF one will find “The Proof”, along with a summary of that area of law and how it works in general. Through the process of dealing with each area of law, in its own area (only what is required), will help simplify how one understands all the areas of English law, as a whole, in association to the land trust granted. These same laws, and one’s acceptance of the specific laws, creates the grant “authority” over one’s “person” and “thing”. Without knowing the subject matter that was granted or who the settlor, beneficiary or the trustees to the trust are or what capacity one is acting in, along with what the rights, duties and laws that govern that particular agreement, a trust is created whereby the settlor creates an express trust while not being aware of its nature. This is construed to be a secret trust (section 15) within English law.

Initially what we need to learn is a basic understanding of the main areas of law that make up the whole before we move onto delving much deeper into those specific areas. One’s goal is to truly grasp the finer details within these foundational laws and

ultimately how they grant authority to preceding laws.

The reason for the introductory PDF (The Proof) is to offer the facts and summaries needed for one to prove the trust and acquire the ability to get it back. To offer more information, and guidance to the individuals that require a more detailed learning experience, a 3 level course will be made available. Each level within this course will have 9 chapters that will really sieve through the finer detail allowing one to have a thorough comprehension, to self determine, and to prove the land trust; following with the termination of it, if you so wish. The simplicity of the 'whole picture' will become evident as you work through the material and realize where the authority begins and ends.

I strongly recommend only using the information supplied by Successors.ca. All sources are from top legal scholars. Everything can be used in a court of law and thus used as constructive notice. In addition, it will assist you in streamlining your reading so to help reduce hours searching, potentially going off topic, and possibly reading something that does not apply to this exact issue.

Due to the feudal land tenure, when the juristic units received the right to make laws and to be sovereign in their own sphere (by statute Westminster 1932), all common law countries (up to 1925), were bound to the laws of the UK (or until they achieve equitable freedoms – the right to create their own law under common law) Since 1932, countries like Canada had the power to create laws independent of the monarchical system of laws' Although now independent these countries were still bound by grants from the English common law. This is why the juristic units rush to legislate new laws, since they can only repeal what they create. Anything these juristic units create will only apply to the citizens of that particular juristic unit. Continuing with Canada, every state/province of this country is now responsible to make its own laws for its mandated jurisdiction. This is why one must look to that particular province/state so to find the corresponding laws for that territory, based on the common law land tenure and the laws of equity that apply to those within that territory.

Everyone in English law can be trustee and is acting as trustee as established in the Settled Land Act (sec 30). When in possession of the land claimed that falls within the Settled Land Act (sec 1 & 2), everyone also has the right to choose not to be trustee as long as they are the settlor to the Settled Land Act (sec 16) and not fee simple to the Settled Land Act 1925 (sec 19) or a trustee under sec 30.

As this introductory PDF only contains the base information it is important to read the sections that contain acts of law. Take the time to read each act in full when they are mentioned. The Settled Land Act 1925, and other parts of the introductory PDF, have a summary to go along with the information so to give a better understanding of that area and exceptions that are default to English law. The notices and supporting documents

contain more jurisprudence (the proof in 'notices sec 18 & 19' with footnotes. Everything needed in a constructive notice for a discretionary trust) along with additional acts of law and jurisprudence. It is vital that you read whatever acts and books etc., that are mentioned and footnoted in the notices (chapter 18 & 19) so that you can better understand them for yourself.

A 3 level course with 9 chapters each is in the process of being created.

Here are important case laws [as an example] to keep in mind as one reads through this introductory PDF:

Re Alfrey Investments Ltd. and Shefsky Developments Ltd. et al., 1974 CanLII 709 (ON SC)

Extinguishment of Owner's Title. **A person in possession of land in the assumed character of owner, and exercising possibly the ordinary rights of ownership, has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title** by process of law within the period prescribed by the provisions of The Statute of Limitations applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title. The Statute of Limitations is a law of extinctive, not of acquisitive prescription. **It operates to bar the owner out of possession, not to confer title on the trespasser or disseisor in possession.**

Mercer v. Attorney General for Ontario, 1881 CanLII 6 (SCC)

The sovereign chosen by society holds the land in trust for the people, as a fidei commissum.

(Blacks law 9th edition : fideicommissum: from brevity, the fideicommissum will here be called "the trust", the person upon whom it was imposed (fiduciarius) 'the trustee', and the person in whose favor it was imposed (fideicommissarius) the "beneficiary".

Fideicommissarius: See Cestuequi Trust.

Cestuequi Trust: One who possesses equitable rights in property.

Cestque vie: The person whose life measures the duration of trust, gift, estate, or insurance contract.)

(701-2)...It was admitted by the learned counsel who represented the provinces in the

argument before us, that this was true with respect to all matters of legislation, but it was contended that when the Act (Const. 1867) deals with “property” the rule was inverted and that the provinces take “all property” not by the Act in precise terms given to the Dominion.

The sole foundation for this contention appears to me to be based upon an assumption which in my judgment is altogether ERRONEOUS, namely, that the BNA Act, transfers as it were the legal estate in the Crown property from the Crown and vests it in the Dominion and the provinces respectively as corporations capable of holding property, real and personal, to them, their successors and assigns forever, BUT THE ACT CONTEMPLATES NO SUCH THING.

Chupryk (Re), 1980 CanLII 2482 (MB CA)

This is a valuable power that was introduced in 1925. A tenant for life may spend existing capital money on carrying out any of the improvements authorized by the Act, but he had no power under the old Settled Land Acts to borrow new money on mortgage for the purpose, though he could raise a loan under the Improvement of Land Acts with the approval of the Ministry of Agriculture and Fisheries.

The Act of 1882 was amended in small particulars by further statutes passed in 1884, 1887, 1889, and 1890, but its policy has stood the test of time, and though it has now been repealed and replaced by the Settled Land Act 1925, its general principles still continue to govern the rights and the liabilities of a tenant for life under a strict.

HOW ONE BECOMES SUBJECT

INTRODUCTION TO ENGLISH LAW AND JURISDICTION

DO- NOT -ACT- ON- ANY- OF- THIS- INFORMATION -UNTIL- YOU- CAN -PROVE -IT- IN- YOUR- OWN- WORDS- AND -UNDERSTAND- IT

- ★ How one becomes subject - Chapters 3-9
- ★ The laws that make one subject - Chapters 10-16
- ★ How to remove being subject - Chapters 17-29

Jurisdictions and the laws which stem from their creation are based on the rights of persons to things (land and things attached to land). Jurisdictions are based on 3 types; territory, subject matter and personal.

The territory is land; who owns the land makes the rules for who uses the land and the things on the lands.

The subject matter is agreements; the set boundaries, concepts and rules negotiated between the person and the owner of the land; when a person who is bound to an agreement breaks the agreement, the subject matter is the law one breaks (specific subject matter of cestui que trust ***land***).

Personal jurisdiction is over the person and the thing (the law in question), jurisdiction is the law that binds the person and the thing based on the territory it is in.

The rights of natural persons not in fee simple are:

- *Life, Liberty*, and **LAND**.

The rights of the juristic citizen acting as an agent to the juristic unit, with civil rights and duties are:

- *Life, Liberty*, and **Property**

The Settled Land Act grants the lands in trust. A land trust is known as a cestui que trust created by statute (***cestui que is only a land trust***), meaning a statutory trust of land (Roman law). By not terminating this land trust created at birth, one agrees to creating an agency to the juristic unit known as government. This is in conjunction with the Infant Act as referenced below:

INFANTS ACT RSBC 1996

Domicile of infant

28 The domicile of an infant is,

(a) **if the infant usually resides with all of the infant's parents and those parents have a common *domicile*, that *domicile*,**

(b) if the infant usually *resides* with one parent only, that parent's *domicile*,

(c) if the infant usually *resides* with a person who is not a parent of the infant and that person has guardianship or custody of the infant, that person's *domicile*, or

(d) if the infant's *domicile* cannot be determined under paragraph (a), (b) or (c), **the**

jurisdiction with which the infant has the closest connection.

Income from securities

45 (1) In this section, "*stock*" includes any share, fund, annuity or security transferable in books kept by any company or society, and money payable for the discharge or redemption of the security or an interest in it.

(2) The court, by order made on petition of an infant's guardian, or if there is no guardian, by order made in any proceeding in the court, may direct all or part of the dividends due or to become due on stock, or any money substituted by an enactment for stock, to which an infant is beneficially entitled, to be paid to a guardian of the infant or to any other person in the court's discretion, for the maintenance and education or otherwise for the benefit of the infant.

(3) An order under subsection (2) must name the guardian or other person to whom the payment is directed to be made.

Repeals

To determine the rules to repeal English law, one must look at all law, from the source, to determine what laws are available for what injuries.

Due to the rules of repeals in English law, one must start from the original grant from the monarchy, this includes common law and equity, from the first enactment till the current enactment, only then will one have all the law for that specific area of law. In a basic sense, the reason why one would need to follow the laws and acts from the beginning is to see if the repealed act(s) cover the SPECIFIC injury and remedy for a specific capacity. If the act does then the repeal stands and you would use this part of the most recent repealed act to introduce for remedy. If it doesn't then the previous act is resurrected' and thus ceases to be repealed.

Example: if one has reviewed all settled land acts ever written, and in the Settled Lands Act 1925 section 106 was never included in any other act of legislation since, whereby for the exact same capacity and thing, along with an individual being injured in the exact capacity for the exact same thing as stated in section 106 of Settled Lands Act 1925, then when one would claim section 106 (within the right capacity and thing), thereby resurrecting section 106 which would result in this section to be no longer repealed for that individual, for that specific thing.

R. v. C. (W. J.), 2008 MBCA 11 (CanLII)

How does repealing a statute affect another statute that incorporates it by reference?

28 Generally speaking, when legislation is repealed, it ceases to be law. As described by Professor Ruth Sullivan, Sullivan and Driedger on the Construction of Statutes, 4th ed. (Markham: Butterworths Canada Ltd., 2002) (at p. 527):

Repeal is the key terminal event in the operation of legislation. When a repeal takes effect, the repealed legislation ceases to be law and ceases to be binding or to produce legal effects. ... It also means that everything dependent on the repealed legislation for its existence or efficacy ceases to exist or to produce effects. ...

29 This rule can be displaced by statute and, indeed, several survival clauses were built into the federal Interpretation Act. One of these clauses, s. 44(h) of the Interpretation Act, provides some assistance in addressing the issue at hand. It reads as follows:

Where an enactment, in this section called the “former enactment”, is repealed and another enactment, in this section called the “new enactment”, is substituted therefor,

(h) any reference in an unrepealed enactment to the former enactment shall, with respect to a subsequent transaction, matter or thing, be read and construed as a reference to the provisions of the new enactment relating to the same subject-matter as the former enactment, **but where there are no provisions in the new enactment relating to the same subject-matter, the former enactment shall be read as unrepealed in so far as is necessary to maintain or give effect to the unrepealed enactment.[emphasis added]**

<https://www.canlii.org/en/mb/mbca/doc/2008/2008mbca11/2008mbca11.html?searchUrlHash=AAAAAQAPInJlcGVhbCIicnVsZXMiAAAAAAAE&resultIndex=10>

Also see The Status of English Statute Law in Saskatchewan law reform commission of Saskatchewan for more in-depth information on repeals and the foundations to English law and juristic units in equity. (□ □3 B)

Settled Lands Act 1925

What constitutes a settlement.

(1)Any deed, will, agreement for a settlement or other agreement, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue

of which instrument or instruments any land, after the commencement of this Act, stands for the time being—

(i) limited in trust for any persons by way of succession; or

(ii) limited in trust for any person in possession—

(a) for an entailed interest whether or not capable of being barred or defeated;

(b) for an estate in fee simple or for a term of years absolute subject to an executory limitation, gift, or disposition over on failure of his issue or in any other event;

(c) for a base or determinable fee [F1(other than a fee which is a fee simple absolute by virtue of section 7 of the Law of Property Act 1925)] or any corresponding interest in leasehold land;

(d) being an infant, for an estate in fee simple or for a term of years absolute; or

(iii) limited in trust for any person for an estate in fee simple or for a term of years absolute contingently on the happening of any event;

19 Who is tenant for life.

(1) The person of full age who is for the time being beneficially entitled under a settlement to possession of settled land for his life is for the purposes of this Act the tenant for life of that land and the tenant for life under that settlement.

(2) If in any case there are two or more persons of full age so entitled as joint tenants, they together constitute the tenant for life for the purposes of this Act.

(3) If in any case there are two or more persons so entitled as joint tenants and they are not all of full age, such one or more of them as is or are for the time being of full age is or (if more than one) together constitute the tenant for life for the purposes of this Act, but this subsection does not affect the beneficial interests of such of them as are not for the time being of full age.

(4) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his

estate or interest therein, is incumbered or charged in any manner or to any extent, and notwithstanding any assignment by operation of law or otherwise of his estate or interest under the settlement, whether before or after it came into possession, other than an assurance which extinguishes that estate or interest.

30 Who are trustees for purposes of Act.

(1) Subject to the provisions of this Act, the following persons are trustees of a settlement for the purposes of this Act, and are in this Act referred to as the “trustees of the settlement” or “trustees of a settlement,” namely—

(i) the persons, if any, who are for the time being under the settlement, trustees with power of sale of the settled land (subject or not to the consent of any person), or with power of consent to or approval of the exercise of such a power of sale, or if there are no such persons; then

(ii) the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890, or any of them, or this Act, or if there are no such persons; then

(iii) the persons, if any, who are for the time being under the settlement trustees with [F1a power or duty to sell] of any other land comprised in the settlement and subject to the same limitations as the land to be sold or otherwise dealt with, or with power of consent to or approval of the exercise of such power of sale, or, if there are no such persons; then

(iv) the persons, if any, who are for the time being under the settlement trustees with [F2a future power or duty to sell] the settled land, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power [F3or duty] takes effect in all events or not, or, if there are no such persons; then

(v) the persons, if any, appointed by deed to be trustees of the settlement by all the persons who at the date of the deed were together able, by virtue of their beneficial interests or by the exercise of an equitable power, to dispose of the settled land in equity for the whole estate the subject of the settlement.

106 Prohibition or limitation against exercise of powers void, and provision against forfeiture.

(1) If in a settlement, will, assurance, or other instrument executed or made before or

after, or partly before and partly after, the commencement of this Act a provision is inserted—

(a)purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life or statutory owner to exercise any power under this Act, or his right to require the settled land to be vested in him; or

(b)attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, **or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising or to put him into a position inconsistent with his exercising, any power under this Act, or his right to require the settled land to be vested in him;**that provision, as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void.

(2)For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any such power or right as aforesaid shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power or right, discharged from liability to determination or cesser by or on his exercising the same.

(3)Notwithstanding anything in a settlement, the exercise by the tenant for life or statutory owner of any power under this Act shall not occasion a forfeiture.

Settled Estates Act 1886 sec 34

Court may exercise powers repeatedly and may exercise them notwithstanding any declaration to the contrary by the settlers.

34. The Court shall be at liberty to exercise any of the powers conferred on it by this Act whether the Court shall have already exercised any of the powers conferred by this Act in respect of the same property or not and such powers may be exercised if the Court shall think fit notwithstanding any express declaration is contained in the settlement that they shall not be exercised and if in any settlement a provision is inserted purporting or attempting by way of direction declaration or otherwise to prevent or forbid the exercise by the Court of any of the powers conferred on it by this Act or attempting or tending or intended by a limitation gift or disposition over of settled land or by a limitation gift or disposition of other real or any personal property or by the imposition of any condition or by forfeiture or in any other manner whatever to prohibit or prevent any person entitled under this Act to apply to the Court to exercise the powers conferred by this Act from so applying or to induce such persons to abstain from so applying that provision so far as it purports or attempts or tends or is intended to have or would or might have the operation aforesaid shall be deemed to be void And an estate or interest limited to continue so long only as a person abstains from applying to the Court to exercise any of such powers or so long only as any of such powers shall remain unexercised shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from so applying or if any such power were not exercised discharged from liability to determination or cesser by or on such persons so applying or by or on any such power being exercised.

[Settlements Act 1886](#)

[Omnipotence.ca](#)

DO- NOT -ACT- ON- ANY- OF- THIS- INFORMATION -TILL- YOU- CAN -PROVE -IT- IN- YOUR- OWN- WORDS- AND -UNDERSTAND- IT

ENGLISH LAW JURISDICTIONS

Video on this diagram coming soon to youtube!

Everyone and every “thing” falls within a territorial jurisdiction, if that territory is a municipal territory, English law applies under the common law uses & trusts system in equity. English law is the foundation system to municipal law, the law diagrams found below would apply.

§ 104. **General Remarks.** — Every person receives at birth a domicile, technically known among modern jurists as “domicil of origin.”¹ Says Lord Westbury in *Udny v. Udny*: “It is a settled principle that no man shall be without a domicile; and to secure this result the law attributes to every individual as soon as he is born the domicile of his father if the child be legitimate, and the domicile of his mother if illegitimate. This has been called the domicile of origin, and is involuntary.”

We have seen that *origo* and *domicilium* in the Roman law were distinct ideas, and the collocation of them in the phrase *domicilium originis* would have implied a contradiction.²

Everyone subject to the English law is acting in right of another through a uses and trust system, therefore not in one's own right, *Life Tenants* are working in the right of the one who assumed the ownership of the *land* as life tenant. Fee-simple is a life tenant that only has a use of the *hereditaments* held in trust, a use is a trust within the English common law, the English common law is the land tenure “the contract”. Equity is acceptance of the common law land tenure contract, acting as agent to the agency to the municipal corporations (equity). By purchasing land one becomes the trustee of the lands and everything attached, which are known as *hereditaments*.

§ 101. Municipal Domicil. With respect to municipal domicil the reason for the application of the rule is particularly strong. In a Louisiana case¹ of that kind it was remarked: "He may change it [domicil] at will, and any restraint upon his choice would be an abridgment of his rights. . . . The law seeks for the intention, and allows every citizen freely to select his domicil accordingly as his interest, inclination, or even caprice may direct."

All governments create their own laws by a grant created from land settlements act, created by the English Monarchy through the settled lands acts, settled estates acts, law of property and the common law. Common law is the contract where only the warranties to have the contract terminated are found today.

Equity is used to get possession and the fee from those who are in possession of the corpus of the trust and causing the waste of said lands, the corpus is the lands and stock created from the lands.

The area's that make up the law of equity are the foundation rules for those who only possess a use for a fee within the common law. Private International Law was used create all areas of law within equity, based on the natural law and the rules of common law.

§ 99. **Modern Jurists.** — Among the modern continental jurists the principle of entire freedom to change domicile at pleasure has been generally received.¹ Bouhier says² emphatically: “One of the principal attributes of the freedom of man is the power to go where he pleases, and to transfer his domicile to whatever place seems good to him, unless he be subject to some political law or seignorial right which forbids.” Mouricault, in his report to the Tribunat, says:³ “The citizen is not tied down to his domicile of origin; free, at his majority or even at his emancipation, to dispose of his person, he may choose his residence where it seems good to him; he may quit not only his domicile of origin for another, but again that one for a new one; he may, in a word, change it at will according to his interest or even according to his fancy.” This language may have been intended to apply only to change of domicile within the territory of France, although its scope seems to be wider. There has been some difference of opinion in France as to whether a Frenchman can establish

A treatise on the law of domicile, national, quasi-national and municipal, based upon the decisions of the British and American courts <https://archive.org/details/atreatiseonlawd00jacogoog>

The diagram (5 A. English Law Jurisdiction diagram) gives a visual graphic of how the area of law; jurisdiction, implies a certain capacity within English law by using/claiming within that area of law. Each type of jurisdiction (territory, subject matter, personal) fall into an area of law within the English law system.

In order for the English law to have jurisdiction, the person or thing must be within the territorial jurisdiction thus granting subject matter, the reason being is that the subject matter and personal jurisdiction are the laws that one is bound to within the territory (state, province, county, country etc). Depending on what agreement you break within the jurisdiction will depend on the federal or provincial/state/country law that will be the subject matter of the particular issue.

Example: If one is within civil law, the civil law applies. The capacity is what you do for a living.

To look at this even deeper, all one needs to ask anyone to know what law applies is 2 simple questions

1. Where do you live
2. What do you do for a living (within a territory as resident).

This may sound familiar to anyone that has been in court before, and it is no coincidence, the judge is 'finding your seat in law'.

The territory tells you what laws make up the civil law and constitution of the juristic unit in that territory, in England they may only have one lawmaker for all the territories within it but for somewhere bigger like Canada they may have different powers that make the laws depending on the state/province or whether it be made on a federal level, by asking where one lives tells one what law and beliefs the one you're interacting with will be bound to and must follow. A good example of this is the differences between two different Countries, and why it is natural to ask where are you from, this is also seen in nature, A deer lives within a territory of juristic units, yet deer are not subject to the law of man, this is due to the capacity of the deer within that territory, the deer has not accepted any agreements, has not acted for anything in trust, one who has rights over the deer is established by the lands the deer is on, along with who owns the lands..

Juristic units are municipal corporations, corporate law, division of powers, each federal and provincial/state/county/country jurisdiction has a written division of powers, the division of powers state the powers of the federal and provincial/state/county/country of that juristic unit. The life tenant is bound by English law, the Monarch created the juristic units then empowered these entities to have their own subjects which included the ability to create the law for the subjects of the juristic units. The subjects of these jurisdictions must fall within the set parameters of *the territorial scheme in place*.

(see 5. B Finding the Seat in Law diagram (territory)).

What do you do for a living tells one a lot more and defines the exact agreement, the rights and duties to that agreement, to what extent those duties/powers extend. The injuries and remedies to those injuries are found in the foundation to all the areas of law that make up the whole agreement. Equity requires law of domicile, conveyances, settled lands, infant act, municipal act, as well as law of agency, contract and trust laws to make up every agreement that anyone subject to english law performs.

Example 1: Jerry is a police officer in Winnipeg Manitoba, Jerry is not performing his

duties as a police officer. Jerry is at the lake in Manitoba, Jerry gets into a conflict with Paul at the lake in Manitoba, Paul is from Africa, Paul is from a tribe not part of a municipal corporation, Jerry punches Paul causing severe injury. Jerry by not performing his duties as a police officer, is acting only as a civil person, only civil law will apply, Jerry will be charged with the law that Jerry is bound to (law of his province/state), in the capacity(civilian) that Jerry was acting in at that time.

Example 2: Jerry is a police officer in Winnipeg Manitoba, Jerry is not performing his duties as a police officer and is at the lake in Manitoba, Jerry gets into conflict with Paul, Paul is from Africa, Paul is from a tribe not part of a municipal corporation, Paul punches Jerry causing severe injury. Jerry by not performing his duties as a police officer, acting as a civil person, only civil law will apply to Jerry, Paul will be charged with the law that Paul is bound to, in the capacity that Paul was acting in at that time, if Paul's territory and laws do not recognize the actions of Paul as an injury against Jerry, Jerry has no remedy, unless Paul's and Jerry's *heads of government and tribe make an inter-jurisdictional agreement* binding the laws of the tribe and government citizens together. Then Jerry may have cause for a claim of injury. Without an inter-jurisdictional agreement there is no jurisdiction over Paul for that action involving Jerry.

Jurisdictions determine the cause and effect to all law, who is subject to the laws of the territory and why, which is why jurisdictions are so important. The rules of jurisdictions remain the same, no matter what jurisdiction you are subject to; territory (domicile), area of law (subject matter) and personal (territory + subject matter) jurisdictions. These are the rules a judge follows when he is finding an individual's seat in law so that he knows what laws apply to each party.


Powell v. Cockburn[1977] 2 SCR 218 1976 CanLII 29 (SCC)

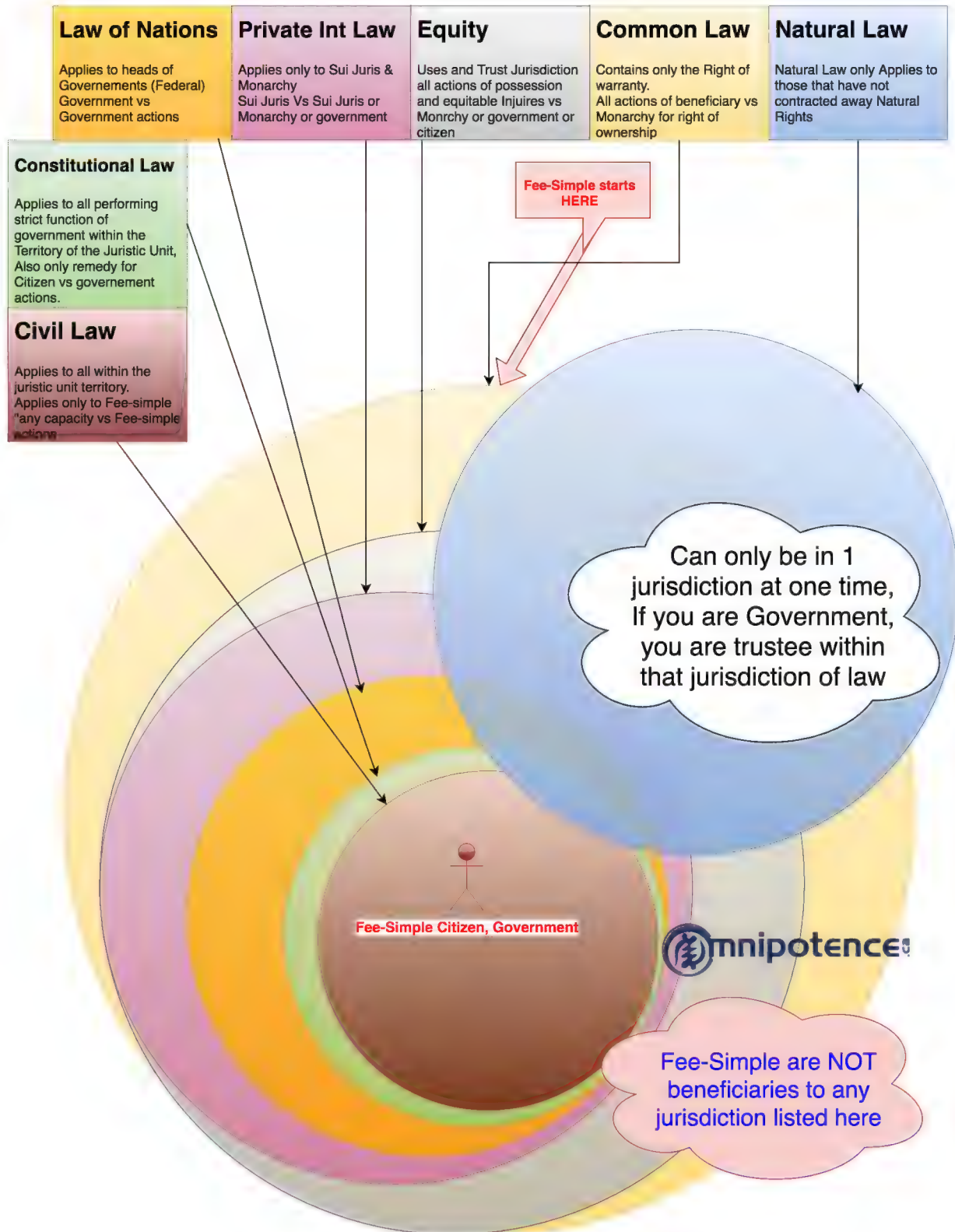
In Bonaparte v. Bonaparte (supra) **a fraud was perpetrated** on the Scottish court by allowing it **to act on the assumption that the pursuer was domiciled in Scotland and that there had been no collusion**. It was held that the Scottish Court was **without jurisdiction** to pronounce a decree in this collusive suit and the decree pronounced was held to be null and void. *The issue was one of want of jurisdiction but it was treated as one of fraud on the Court. It should be noted that “jurisdiction” in Bonaparte v. Bonaparte was used in a private international law sense rather than in what might be termed a “domestic competence” sense, but I do not think that serves to make the case inapplicable.*

This graphic representation (see 5 A. English Law Jurisdiction diagram) of the flow of the area of law jurisdiction as lands are determined by who holds them and in what capacity.

Supporting Documents for this chapter:

□  A. English Law Jurisdiction diagram

□  B. Finding the Seat in Law diagram (territory)



AREA OF LAW

Video on this diagram coming soon to Youtube!

The area of law diagram below is to help visualize what capacity or class the subject(s) within English law is bound to. The area of law is determined by the agreements one makes. The agreement is a conveyance, *conveyances are of two kinds a contract or a trust*.

When area of law jurisdictions are looked at as a whole, what was given to the English law group to be a citizen, we find that it is lands, English law assumes everyone knows and understands what was given, along with the rights and duties one took in place of natural rights and duties. Territory jurisdiction is assumed, along with the gift of lands, this creates a second issue that at first is very difficult to see, to understand what laws applies to who, one must look at who created the law and for who, along with what “things” are dealt with within that area of law.

Common law creates all English law, then gives Equity the right to create its own laws independent of common law, as long as equity laws do not infringe or abridge the rules of succession (succession is a tricky word and will get into its true meaning in level 2 course).

This is where it starts to get even more tricky, equity applies unless no law of equity takes up that place in law for that issue, then common law takes its place. Equity only applies to subjects of the provincial/state territory that is a municipal law jurisdiction.

When we now look at the area of law, the importance of what law one uses as his right vs what another must do are opposites in law, completely separate from each other. What law you are bound to and what law another is bound to are two completely different things in law, yet the same laws “can” apply to both, yet they may not, to assume all are bound by the exact same law as oneself is a drastic yet common mistake.

Re Alfrey Investments Ltd. and Shefsky Developments Ltd. et al., 1974 CanLII 709 (ON SC)

Extinguishment of Owner's Title.**** A person in possession of land in the assumed character of owner, and exercising possibly the ordinary rights of ownership****, has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by process of law within the period prescribed by the provisions of The Statute of Limitations applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title. The Statute of

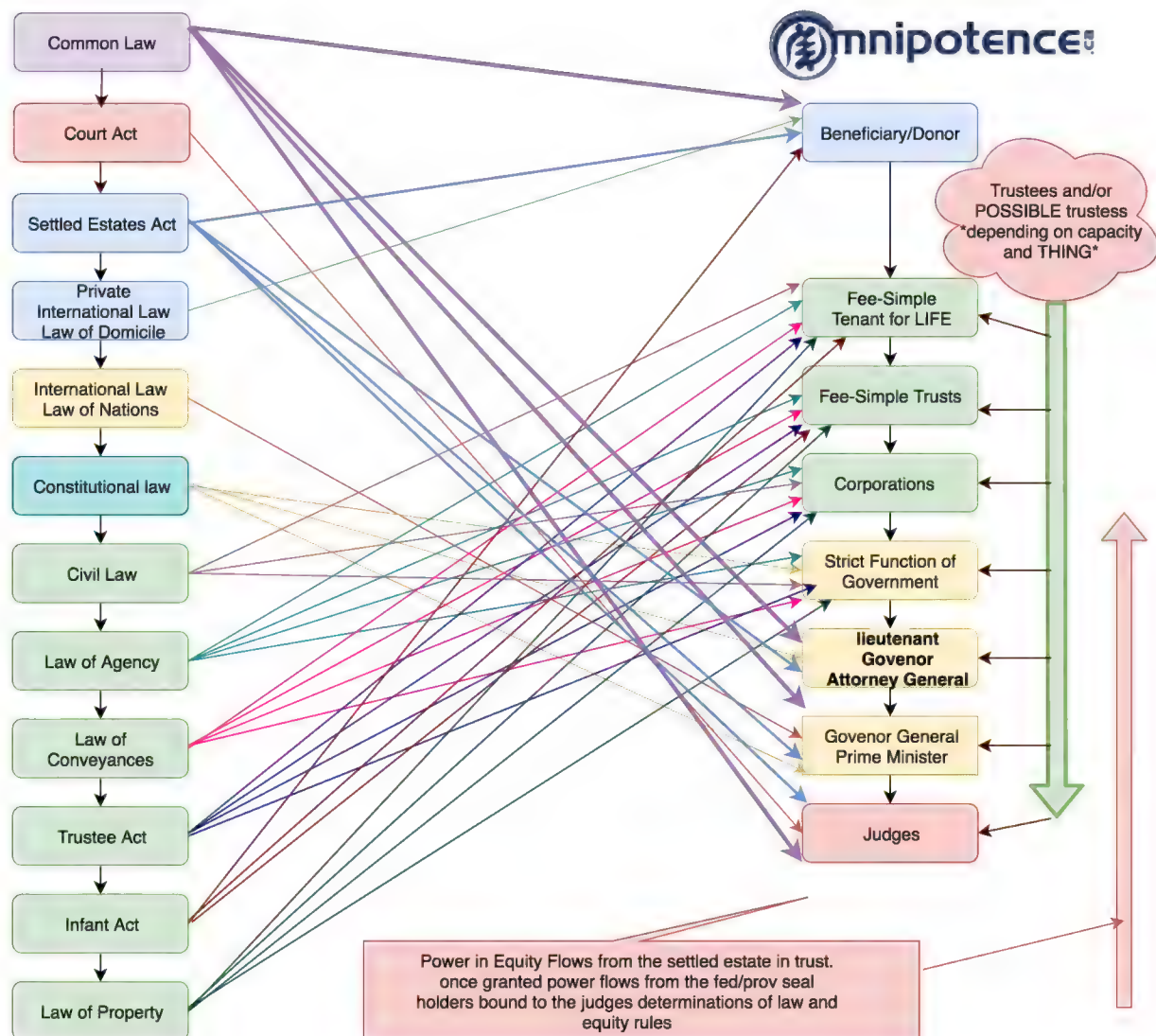
Limitations is a law of extinctive, not of acquisitive prescription. **It operates to bar the owner out of possession, not to confer title on the trespasser or disseisor in possession.**

Example: claiming a land within law of property vs claiming one bound to law of property where one must do something. Law of property is used for the subjects of the land in trust, in possession with a vested interest by purchase or descent. If one uses the law of property in the form that it applies to you, you make yourself trustee and life tenant with a use for a fee only.

The correct way to claim against a fee simple in your capacity is to find the laws within law of property that correspond to the conveyance that you gave valuable consideration to, being a common law grant giving the power/authority to the juristic unit, and where one finds the warranties that are being written out of equity since no one in equity can use the common law remedies. (they activate when you move into the proper capacity to have privity of contract as settlor, as briefly mentioned previously in repeals)

The importance to the areas of law along with how it is used, is directly linked to territory and the grant of lands, along with the capacity one is acting in, or as.

The following diagram is an example on how the capacity in which one is acting within English law will determine the laws one must use to restrict and to get remedy, one should notice that each area of law is exact to the capacity and issue they can come into contact with.



BASIC HISTORY OF LAW

Video on this diagram coming soon to Youtube!

The common law contract was started by the Domesday book, and continues today. The Monarchy has never granted law directly to the people, the monarchy has always used a group for that purpose, The group is a use, land trust group.

The first group grant was to the lord manors by the Magna Charta, this is the common

law constitution, an agreement between the Monarchy and lord manor only, not the people of the realm. The Monarchy grants powers to the group by uses and trusts (act of law), known as English Common law land tenures, there has been three different uses & trusts systems of English law since December 25th 1066; Feudal, Ancient and Modern.

Some of the laws that each of these uses and trusts groups created throughout English law still apply today. Many have been manipulated through law repeals, both common law and equity, keeping in mind only the creator of a law can repeal or change a law they create and only for the subjects of that territory.

To summarize all past laws are still in force as long as not in contradiction to the foundational rules for the capacities in which they apply to. (very broad and can change due to capacity in law, a trump card)

Collected papers of Maitland Vol 1

It is really high time that the question should be asked, whether we gain anything whatever by keeping two systems of property law. Two systems we have, as many know to their cost, each with its own peculiar history, each with its own peculiar doctrines. Of course, it is plain enough that for certain purposes law must distinguish between the various subject matters of proprietary rights, and must place land in one class, moveable goods in another. It is chiefly with regard to the remedies for wrongs, breaches of contract, trespasses, and the like, that the distinction is important, and the distinction is well enough marked in English law, but marked, it should be noticed, by a line which does not coincide with that which divides real from personal property. And yet it is to this distinction that the words *real* and *personal* apparently point; for real property, so the phrase would lead us to think, there are real remedies, for personal property none but personal remedies. But these words are of late introduction, and were always inapt. The old word *hereditaments*, things descending to the heir, is the real key to the situation. Our distinction between

Since this is just the proof (with the details and proof to those finer points coming in an online course), we will only deal with the modern land tenure system under municipal

law corporations that started after 1666 and the change in the monarchy in 1688 and the changes through to today within the current system of English law.

English law is based on capacities (rights), the higher your capacity in law the more rights and less duties one has to another. English law is based on fidei commissum (picture below) a trust agreement is the foundation to English law land tenures and the English common law, the land tenure has never changed, and by using equity as another level of trust, those in equity appointing a new monarchy in 1688, allowed for more powers to be given to the jurisdiction of equity.

Mercer v. Attorney General for Ontario, 1881 CanLII 6(SCC)

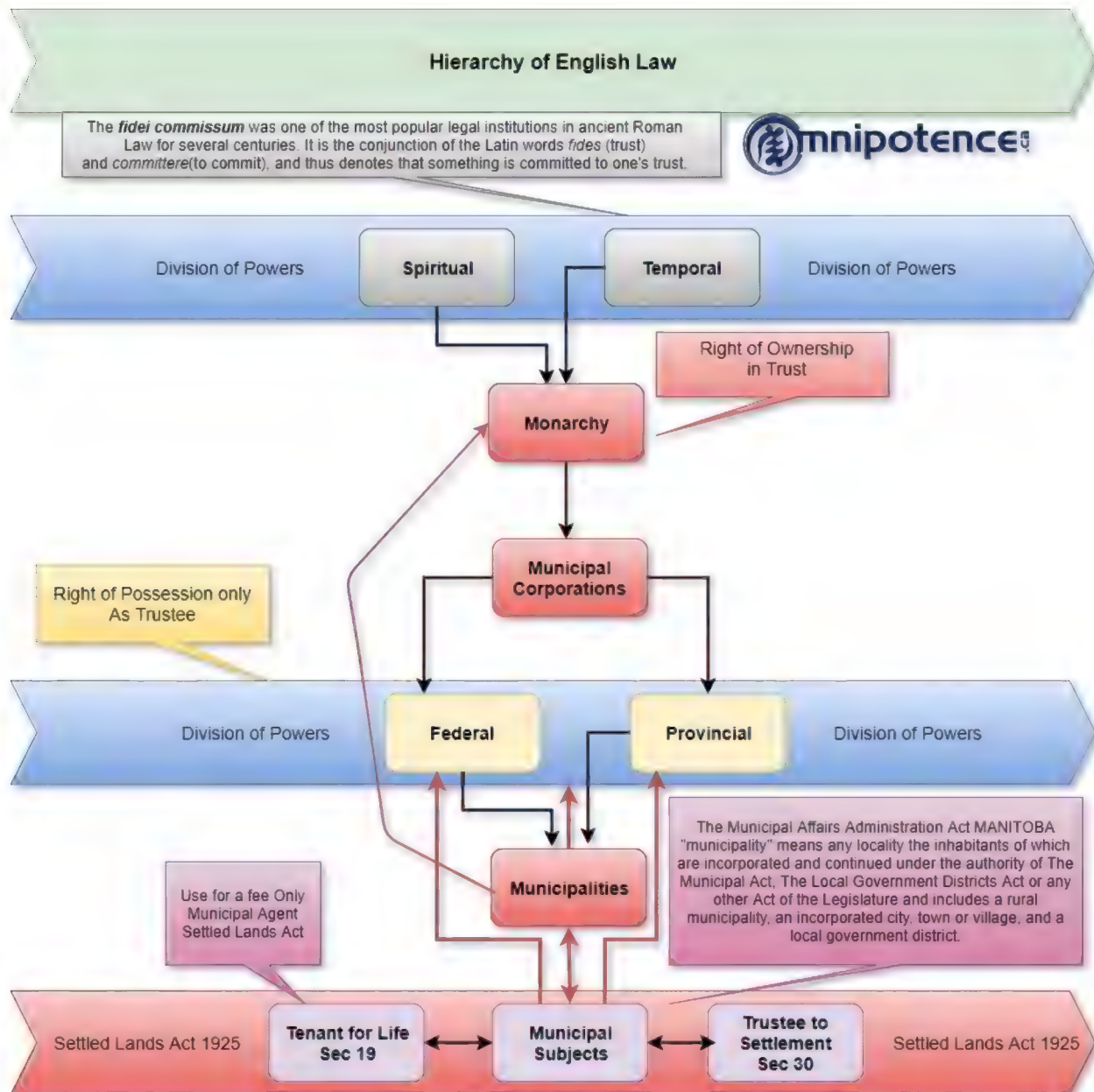
The sovereign chosen by society holds the land in trust for the people, as a fidei commissum.

Blacks law 9th edition :fidei commissum is also known as cestuique trust as the “beneficiary”.

(701-2)...It was admitted by the learned counsel who represented the provinces in the argument before us, that this was true with respect to all matters of legislation, but it was contented that when the Act (Const. 1867) deals with “property” the rule was inverted and that the provinces take “all property” not by the Act in precise terms given to the Dominion.

The sole foundation for this contention appears to me to be based upon an assumption which in my judgment is altogether ERRONEOUS, namely, that the BNA Act, transfers as it were the legal estate in the Crown property from the Crown and vests it in the Dominion and the provinces respectively as corporations capable of holding property, real and personal, to them, their successors and assigns for ever, BUT THE ACT CONTEMPLATES NO SUCH THING;

Below diagram shows the start of the new modern uses and trust system by municipal law and how the powers move around, this will be discussed in depth in the course to follow.



Everyone is born with natural rights, Life, Liberty and Land. In English law jurisprudence one is required to have the right of ownership in trust, citizens are required to accept civil rights and duties which consists of Life, Liberty and Property, property signifies only a use for a fee as life tenant, ownership in English law is held in trust.

The natural person upon purchase or descent of lands within the territory of English law is acceptance to the land tenure as well as the right of ownership held in common law with the monarchy as a successive interest (succession) to lands (not the throne - different type of succession). The monarchy by the rules of English trust law can not give away ownership except to give back to the one that gave the right of ownership (common law trust). Equity holds only the equitable use of the thing attached to the lands and not the lands itself (hereditaments).

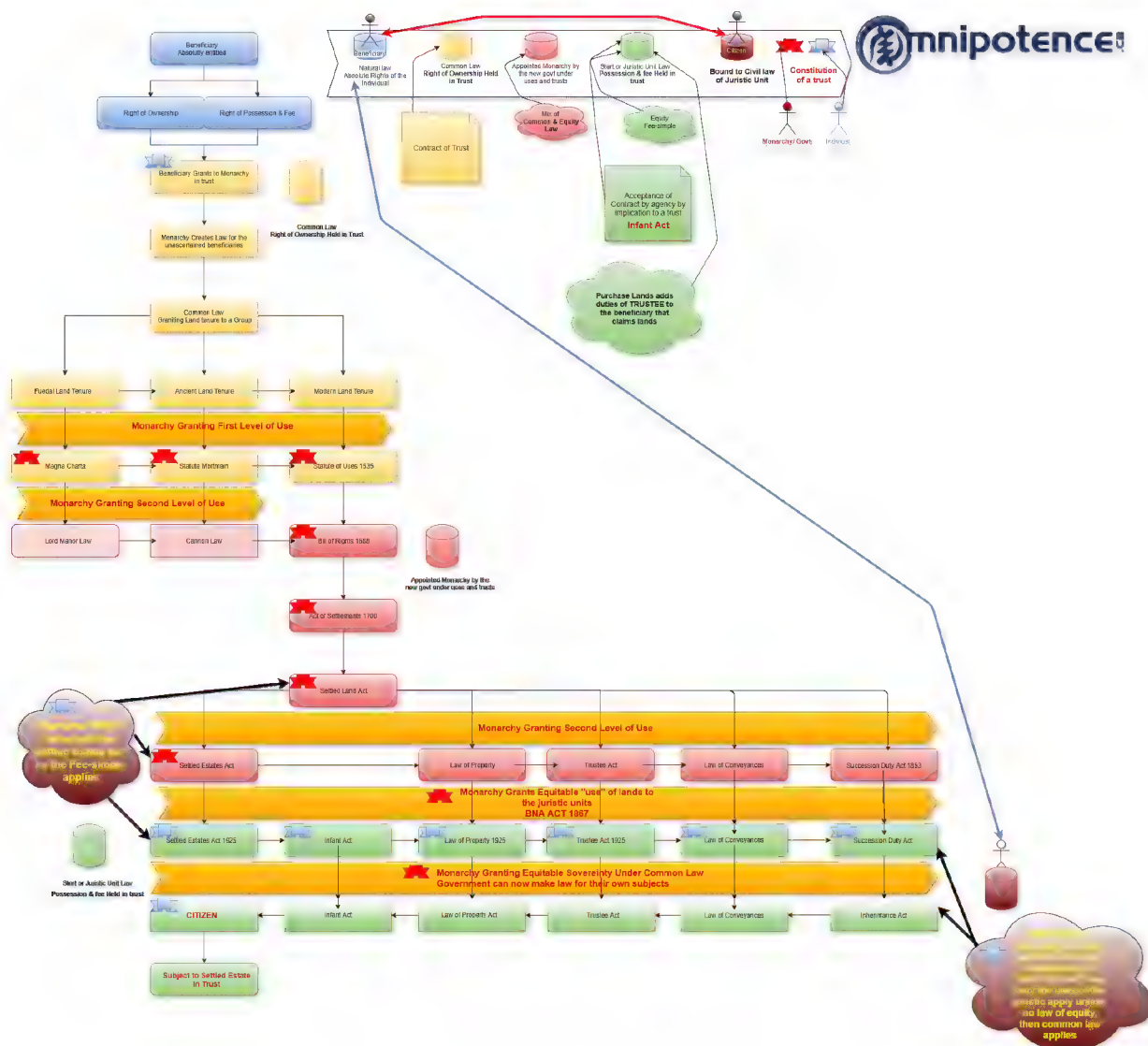
Every grant within English law is based on a trust “constitutions of the trust”, one can follow the grants on the below chart, the monarchy grants a use to the government for a fee, once this is complete the government writes a constitution for its newly acquired rights, and to establish a set of rules for all within that juristic unit territory.

The settlements act creates additional rights and duties for the sale and lease of lands from 1700 till 1886, till the consolidation of the lands by the settled lands act 1925 when mortgages were added to the English equity law as legal, and the start of legal mortgages within the juristic unit.

The individual creates an express trust when one takes the thing in trust as trustee, creating the tacit acceptance as stated in the settled lands act, the Infant act makes the tacit acceptance legal when one becomes of age within a municipal territory and not before.

The diagram below shows the agreements that make up the 3 certainties to create a valid trust. You will notice there are 2 agreements, one between the monarchy and govt, another between the citizen and govt, notice there is no agreement between citizen and monarchy, once an individual accepts the municipal group, the individual by actions (express trust) has chosen everything within the territorial sphere of law.

The following diagram will show how common law creates equity and the capacities that are within that tenure system. This diagram is the order of monarchy laws granting the powers (to government) to the entity (feudal, ancient and modern land tenures) in charge of the uses and trust jurisdiction, this allows the juristic units to make law for the subjects not the monarchy. Notice the ribbons, they show where to find the 3 certainties in law to prove what is required by the acts of legislations and common law.



COURT JURISDICTIONS

Video on this diagram coming soon to Youtube!

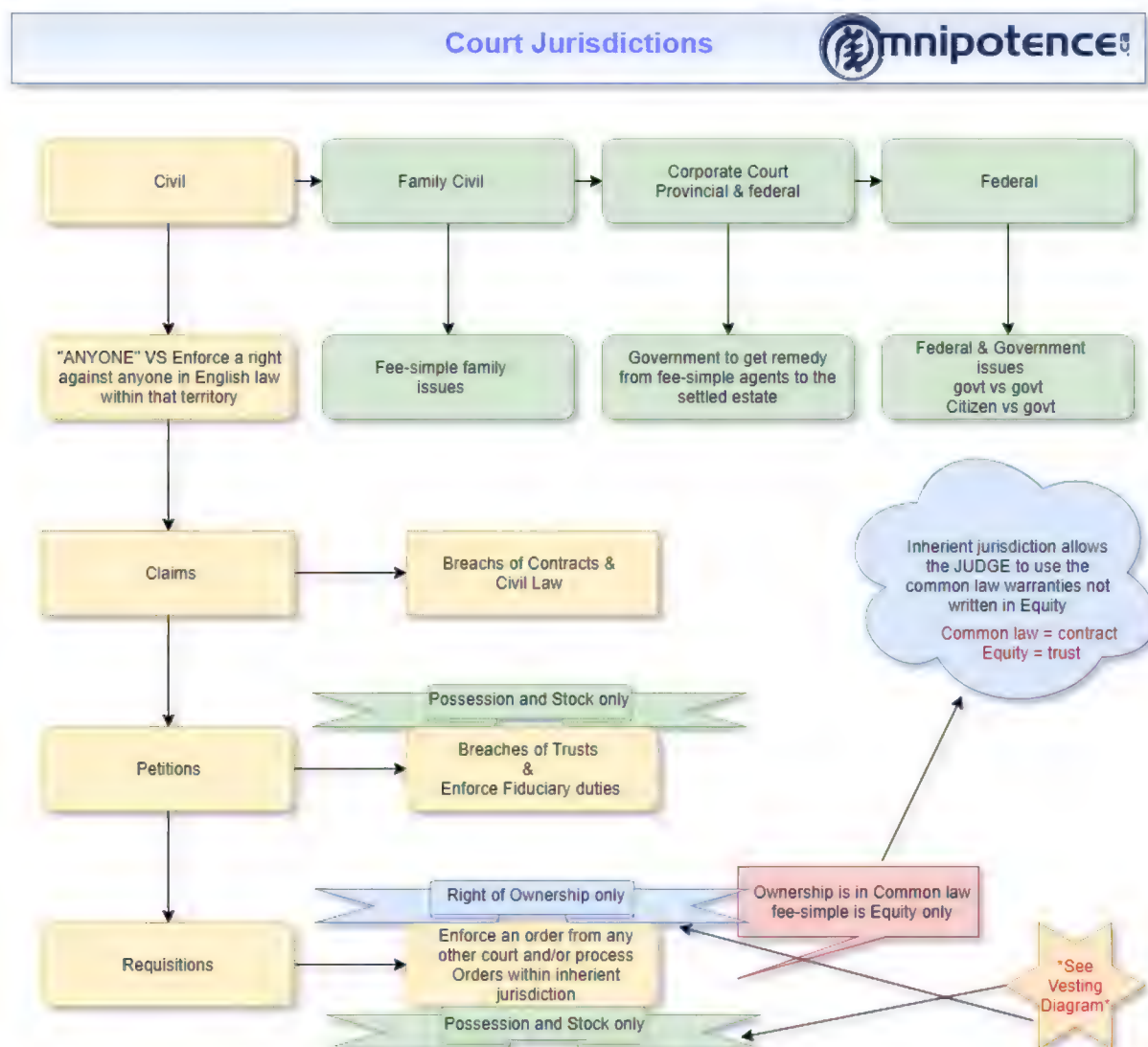
The courts and their jurisdictions are simplified when one looks at what type of actions are permitted at each level of the courts system. The English courts changed drastically in 1800, combining the duties of the equity judges with both the rights and duties of common law and equity, as well as the inherent jurisdiction to judge all on the rules of law of domicile and private international law, called finding the seat in law.

This diagram is only an introduction to what you will find on Successors.ca courses, due to the exactness of the issue and capacity we will leave this area till Level 3, the final level of the course. The course deals with every area of law and all aspects of English law

needed to terminate the land trust, including the jurisdictions and powers of the courts, when and how to use the courts, why trust law cases are not trials, how trust law cases are petitions and requisitions and yet contract and injuries is where one uses a claim in a court and is in a trial where one questions witnesses.

Trust Issues are not dealt with in trials, only for the injuries to the trust.

The following diagram will help show how the courts are set up.



VESTING

Video on this diagram coming soon to Youtube!

The following diagram illustrates how trusts are dealt with, and that court is only required after a breach of the rules of trust law AND **the conveyance itself** (the trust).

Notices in trust law are the key, a notice for a trust must be constructive notice and include EVERYTHING needed, one of the requirements for a constructive notice for an injury of forfeiture is that it must accompany a claim of disseisin, a claim of disseisin by forfeiture is only for lands in trust and must include a claim of the freehold; without a claim of freehold to terminate the trust in full, then one can not terminate a trust. English law is based on the common law land trust, the powers created from the land grant to govern, without the land in trust one can not be part of the group.

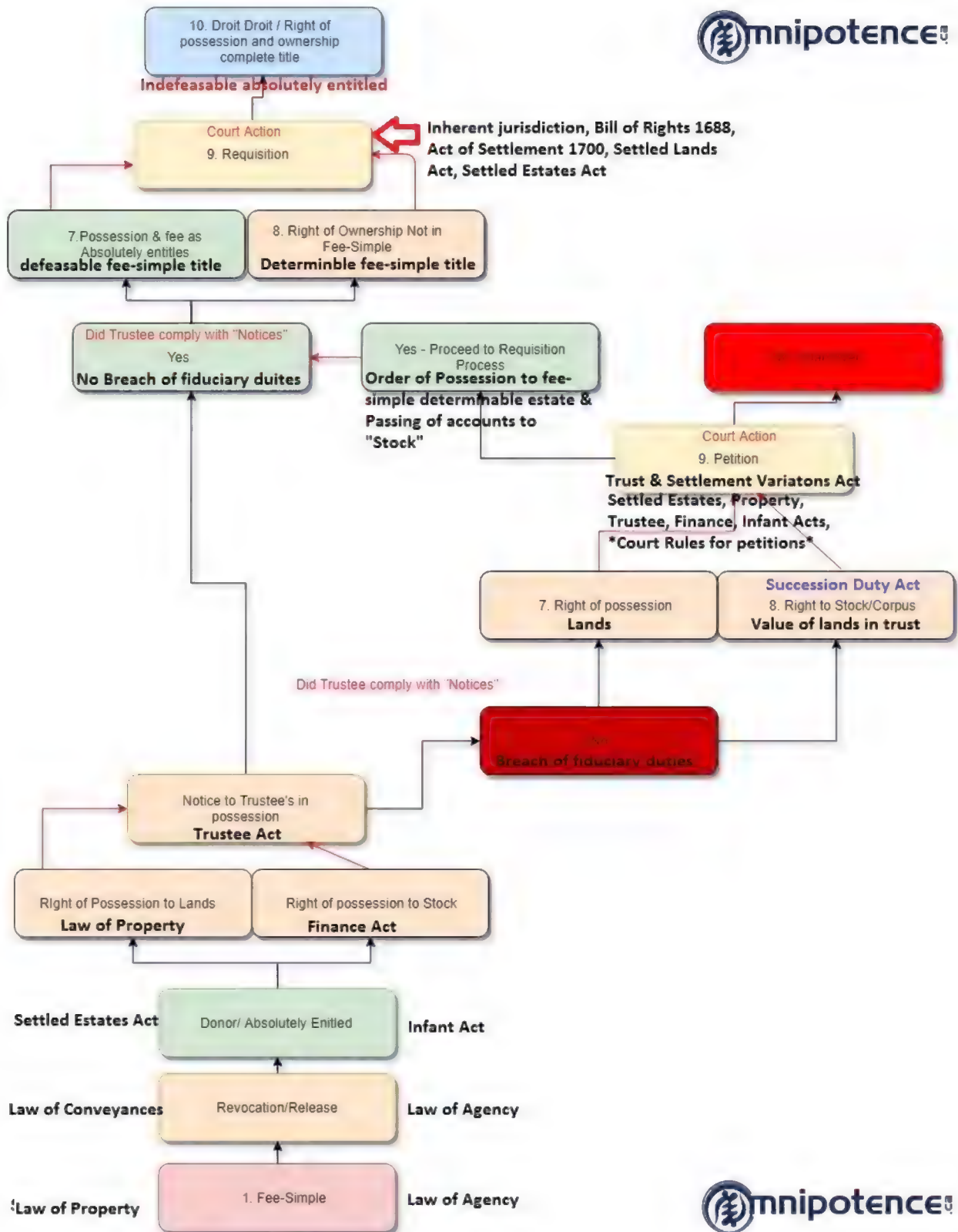
A constructive notice must be complete, ANYONE including a judge that has no prior knowledge of the facts must be able to determine the NOTICES sent, only once a determination is made on the notice can an order to comply with that notice be awarded. In other words everything must be in the notice with supporting documents, along with the acts of legislation that forces them to comply.

The cestui que trust and the trustees of such a trust are discretionary trustees, only when the discretionary trustee does not take into account the new information the trustee is required to by law, and the trustee fails to make a proper determination required by law, then and only then is a petition taken to the courts, where the judge determines if the trustee should have taken that new information into consideration and acted on it, once that has been determined, a trustee/court can make an order to appoint or force a trustee to act.

This area of law is very tricky as it is dealing with a specific trust, within a specific capacity, where many of the default rules one is accustomed to no longer apply. The capacity and right to the lands and hereditaments in trust turns absolute. The possession is 9/10 of the law crumbles when the holder of the 1/10 has an absolute right and the party with 9/10 is trustee to the one with 1/10.

Due to the complexities of the specific areas of laws and capacities it is impossible to go over everything in the detail required in a single PDF that is to be simple facts that lead

to the truth to English law. Everything is included in this PDF, yet do not have the luxury of being able to point out everything in this PDF and how it all works as a whole, the proof is all here for you to look into and see for yourself but if you need help with the understanding of what you are reading and breaking it down, the 3 level course will be invaluable to you.



MODERN USES & TRUSTS LAWS

In principle the modern land tenure that makes up the current uses and trusts equitable jurisdiction started in 1535 by monarch statute 27.H.8, the final enabling powers can be found within the statute 32.H.8, the creation of the wills for the new jurisdiction and why wills are found within the estates' jurisprudence within equity.

This chapter will consist of important jurisprudence that is highly recommended to read, the PDF documents are to help show you the proof of the history to make sense of what has transpired at the start of the current Equity system of English law into what it is today, keeping in mind this is the very start of the current equity system in the 1500 to 1700, this is a time of great change within English law, not till after 1800 do we find the next level of trust granted to the life tenants being fee-simple to the municipal corporation by land settlements and where the justifiable remedies for the current system are found to end the trust.

Many may get the wrong idea of equity once one has read political causes of the statute of uses and the jurisprudence attached, the issues being spoken of are in the era of 1500-1800 and does not include the new laws that in the time of 1500-1800 did not exist nor have the abilities in order to give the remedies or to permit laws for citizens to use certain hereditaments.

Many will find it difficult to feel comfortable reading this information and how blunt some of it is regarding the true nature of the English law system, if one always look at the era for the time the law is written and not go back in time for oneself when reading, laws are written for an exact issue in time, for the capacities that exist in that time, many of these capacities no longer exist, one can look at this as growing pains of nature of a large group of people learning how to interact with each other, because of the problems one will start to see with the foundations to the current system of law one will soon ask, how far back one must go to correct the laws, concerning freedom, and what it is today.

No one but yourself can choose what that new tomorrow is, since you did not pick this one, and how that makes people feel is a hard pill to swallow, the reason for this information is not to make one uncomfortable, the goal is to show the hidden history for one to be able to choose to self govern, learn the natural interactions between men/women yourself to make your very own choices and direction in life, and law.

One thing to think about is :

- how can freedom start with another creating the foundation rules to life, liberty and land for you?

The following books are added to supply you with the information for this era in law and to help give the information that one can believe and continue to follow to get the whole picture and understanding not only to English common law but also the history of English law and equity from the start, to get one's own full understanding of all law and jurisdictions, and how these foundations are all the same no matter the system.

Every act of law is created at an exact time, for an exact issue and capacity part of that issue, this is called the means and ends to law, the judges can only use the laws that have the means and ends for that issue, this is also part of the area of law jurisdiction, and one of the specifics most do not know about when it comes to law, how it applies and to who and why, (means and ends can be found within constitutional law of the country in question) the course will explain further.

Supporting Documents for this chapter:

- 10 A. Political causes of statute of uses 1535
- 10 B. 19.Car.2.ch 16
- 10 C. 6.Ann.ch.18
- 10 D. 5&6 w&m municipal corporations act
- 10 E. Bill of rights 1688
- 10 F. Statute of Uses 1535

THE LAWS THAT MAKE ONE SUBJECT

Everyone in English law creates an express trust by being a settlor of the lands (hereditaments), then accepting the hereditaments in trust as a trustee. If you noticed, the statute of uses 1535 granted the new juristic units the lands and 19.Car.2 (cestui que act 1666) moves the people into the new agreement.

HEREDITAMENTS then, to use the largest expression, are, of two kinds, corporeal, and incorporeal. Corporeal consist of such as affect the senses; such as may be seen and handled by the body: incorporeal are not the object of sensation, can neither be seen nor handled, are creatures of the mind, and exist only in contemplation.

CORPOREAL hereditaments consist wholly of substantial and permanent objects; all which may be comprehended under the general denomination of land only. For *land*, says sir Edward Coke^c, comprehendeth in it's legal signification any ground, soil, or earth whatsoever; as arable, meadows, pastures, woods, moors, waters, marishes, furzes, and heath. It legally includeth

The following laws are showing the history of land grants, make sure to read who is giving the gift, and who receives the gift and what rights and duties over that gift are conveyed. Settled lands acts are very important and include an important treatise in law on the settled lands acts.

It is important to read these acts in full, pay attention to the heading of the act, including who creates the law, who the law is granted to, as well as who are subjects to the law, and what was granted.

The treatise on the law and practice under the settled lands acts shows the importance of treatises in law, treatises on acts of law are somewhat different than treatises on areas of law and jurisdictions, treatises on act of law are specific to the act and each section of that act.

Each section within the treatise explains every aspect of that act and section of law, including all things that can come into contact with that act and section, if the treatise does not incorporate an issue/capacity within that section, that issue and capacity does not attach in law.

The following acts of English law follow the land trust from today to the original grant of the modern land tenure.

Successors.ca courses takes one on a journey from before 1066 to the current in a

simple, easy to understand manner providing you with all the source documents for you to read and prove to yourself as well as to have the ability to become sui juris (self determined) taking care of oneself, fully understanding the interactions between men/women in nature, English common law & equity, as well as all other jurisdictions created by man.

Supporting Documents for this chapter:

- 1 A. Act of settlements 1700
- 1 B. Law of conveyancing Act 1881
- 1 C. Law of conveyancing Act 1882
- 1 D. Settled lands act 1882
- 1 E. The law and practice under the Settled land acts 1882-1890
With the statutes and the rules and forms issued under the Settled land act 1882
- 1 F. Settled Estates Act 1856

IMPORTANCE OF THE SETTLED LAND ACT 1925

Settled Lands Act 1925

Read the heading and introduction of every Act of law, the heading states the subject matter that the law attempts to reform. This is the first set of categories within English law (being the law itself), whereby the jurisprudence matches the subject matter and area of law jurisdictions.

Section 16 Link.

Section 16 must be complied with before one enforces sec 17 because in trust law *one must get possession of 100% of the corpus of the trust before termination of the trust can occur*. Acceptance, release and indemnify actions, within the trust, are enforced by the trustee. These powers are required and therefore are granted by the settlor to enact the power of trustee. The settlor must release and confirm the rights and powers of the trustee in order to change the wishes of the trust. Once the trustee no longer has a right or duties or possession of the corpus of the trust can the trust be considered 100% terminated.

16 Enforcement of equitable interests and powers against estate owner.

(1) All equitable interests and powers in or over settled land (whether created before or after the date of any vesting instrument affecting the legal estate) shall be enforceable against the estate owner in whom the settled land is vested (but in the case of personal representatives without prejudice to their rights and powers for purposes of administration) in manner following (that is to say):—

(i) The estate owner shall stand possessed of the settled land and the income thereof upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the equitable interests and powers affecting the settled land or the income thereof of which he has notice according to their respective priorities;

(ii) Where any person of full age becomes entitled to require a legal estate in the settled land to be vested in him in priority to the settlement, by reason of a right of reverter, statutory or otherwise, or an equitable right of entry taking effect, or on the ground that his interest ought no longer to be capable of being over-reached under the powers of this Act, the estate owner shall be bound, if so requested in writing, to transfer or create such legal estate as may be required for giving legal effect to the rights of the person so entitled;

What is Vested?

Vested in the one in possession, trustees have a vested right with a properly constituted trust, and the settlor has a right of reverter; reversion, right of reverter and right of entry are annexed together in trust law, *the stepping stones of the settlor revoking a trust for cause*. (SP)

Sec 16 gives everyone in fee simple the right to revoke the trust with a right of reverter, on the grounds that one's interest ought to no longer be capable of being over-reached under the powers of this Act... in other words the act has to speak to the matter specifically and cannot speak to remedies not found under the act

Everything in section 16(1) (ii) of the settled lands agreement is addressed to the settlor specifically who did not intend to create a trust for an 'actionable reason'* within the rules of English law (to get the corpus of the trust, to GET the vested right IN POSSESSION). Fee-simple can only give what they have, every trustee can only give what they have! In equity a scenario could look like this:

'A' is a tenant for life-owner thereby having both legal & equitable title in property with only a use as trustee to the Settled Land Act.

'A' mortgages to 'B'

'B' now has equitable title and 'A' remains with legal title until the mortgage is satisfied thereby giving 'B' the right to maintain both. In reality what 'B' is really purchasing is the right to possess the legal title, which is the rights associated with the title itself.

A complete title is the two rights together: **right of ownership AND right of possession (droit droit)**. Only once one has obtained the right of ownership along

with possession does one have the right of the **fee** . One must command both rights in land in order to have a complete title.

These are rights nothing more. It is the ability in the eyes of that jurisdiction that you can do certain things. These rights are broken up and are given to different trustees; one must claim the correct right at the correct time. The 'bundle of sticks' is your complete rights granted to others in trust. The sticks represent ones original right as settlor, with both right of ownership and possession being split (in half) from the 'one stick'(Josh Blackman 1st year property law video "Bundle of Sticks" found [here](#)). The pieces of a stick one holds in fee simple is one's bundle of rights, why everyone in fee simple are not acting in their own right but in the right of another. When one gives a thing in trust, then take that same thing in trust from the trustee as the agent, it makes one agent to the trust and no longer acting as the settlor in their original capacity, the settlor has now created an express trust in English law giving acceptance due to taking the thing in trust from the trustee and acting as a different capacity in law.

(Picture Readable Edition of Coke upon Littleton)

Co. Litt. 266a.

RELEASES.

Litt. s.447.

known, that there is jus proprietatis, a right of ownership, jus possessionis, a right of seisin or possession, and jus proprietatis et possessionis, a right both of property and possession; and this last is anciently called jus duplicatum, or droit droit. For example, if a man be disseised of an acre of land, the disseisee has jus proprietatis, and the disseisor has jus possessionis [that is, as against strangers, but not as it should seem against the disseisee, as against him the disseisor cannot well be said to have a right, but only a bare naked possession]; if the disseisee releases to the disseisor, then the disseisor shall have jus proprietatis et possessionis [and his title will be complete.]

What is required for sec 16 to take effect?

(ii) *Where any person of full age becomes entitled to require a legal estate in the settled land to be vested in him in priority to the settlement, by reason of a right of reverter, statutory or otherwise, or an equitable right of entry taking effect, or on the ground that his interest ought no longer to be capable of being over-reached under the powers of this Act, the estate owner shall be bound, if so requested in writing, to transfer or create such legal estate as may be required for giving legal effect to the rights of the person so entitled;*

What is the effect:

(5) Save as hereinbefore expressly provided, no legal estate shall, so long as the settlement is subsisting, be transferred or created by the estate owner for giving effect to any equitable interest or power under the settlement.

(6) If a question arises or a doubt is entertained whether any and what legal estate ought to be transferred or created pursuant to this section, an application may be made to the court for directions as hereinafter provided.

(7) If an estate owner refuses or neglects for one month after demand in writing to transfer or create any such legal estate, or if by reason of his being outside the United Kingdom, or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the transaction cannot otherwise be effected, or cannot be effected without undue delay or expense, the court may, on the application of any person interested, make a vesting order transferring or creating the requisite legal estate.

(8) This section does not affect a purchaser of a legal estate taking free from any equitable interest or power.

Notice *the effect*, how the effect can add more requirements, for specific requirements so long as the settlement is subsisting, and can be transferred or created by the estate owner for giving effect to any equitable interest or power under the settlement. (emphasis added)

Now let's look at the common law doctrine on reversion of estates, Coke upon Littleton...

No remitter if one estate be at common law and other under stat of use.

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The reason is no folly can be attributed to the infant in accepting the feoffment at the time it was made. Hence therefore, in this case the law respects the time of the feoffment, and not the time of the death: and albeit the infant might have waived the estate at his full age, yet [seeing that would be to his loss and prejudice, he shall have the benefit of the feoffment till his ancestor's death, when] the right of the estate tail descending on him either within age, or of full age, shall work a remitter [to his estate in tail]. But since littleton wrote, there is a great alteration in remitters by the statute of uses H.8.c.10; for if a tenant in tail now make a feoffment in fee to the use of his son (within age) and his heirs, and dies, and the right of the estate tail descends to the son within age, yet he is not remitted, because the statute executes the possession in such plight, manner, and form, as the use was limited; [whereby the issue is in, not of the estate discontinued, but of a new use under the statute]. But if the issue in tail in this case waives the possession, and bring a formedon in the descender, and recover against the feoffees, he shall thereby be remitted to the estate tail; otherwise the lands may be so incumbered that the issue in tail would be at great inconvenience; but if no formedon be brought, and that issue dies, his issue shall be remitted; because an estate in fee-simple at common law descends upon him.

Disseisee taking any estate from disseisor by parol or deed poll remitted

pg 604

Also, If a man disseised, and (being of full age) takes back an estate from the disseisor without deed, or deed poll, this is a remitter to the disseisee

Here not a diversity between right of entry and a right of action; for if a man of full age having but a right of action takes any estate, he is not remitted: but where he has a right of entry, and takes an estate, he by his entry is remitted, because his entry is lawful. And if the disseisor infeoff the disseisee and others, the disseisee is remitted to the whole, for his entry is lawful: otherwise it is if his entry were away [by a descent cast, or

What is being shown here is that you can not be in 2 capacities at one time; you must choose one estate. This can get a bit confusing when speaking to estates in land i.e. common law is the contract and equity is the acceptance of the common law contract being the "gift" of lands - the trust! The trust in equity created the gift, where before 1688 & 1535 the monarchy, acting on behalf of the common law, seldom recognized the individual as true absolute owner. While acting as trustee the monarchy enacted the Bill of Rights so to settle the line of successive interests in the common law. This allowed for the 'rights' established in equity to manage the trust.

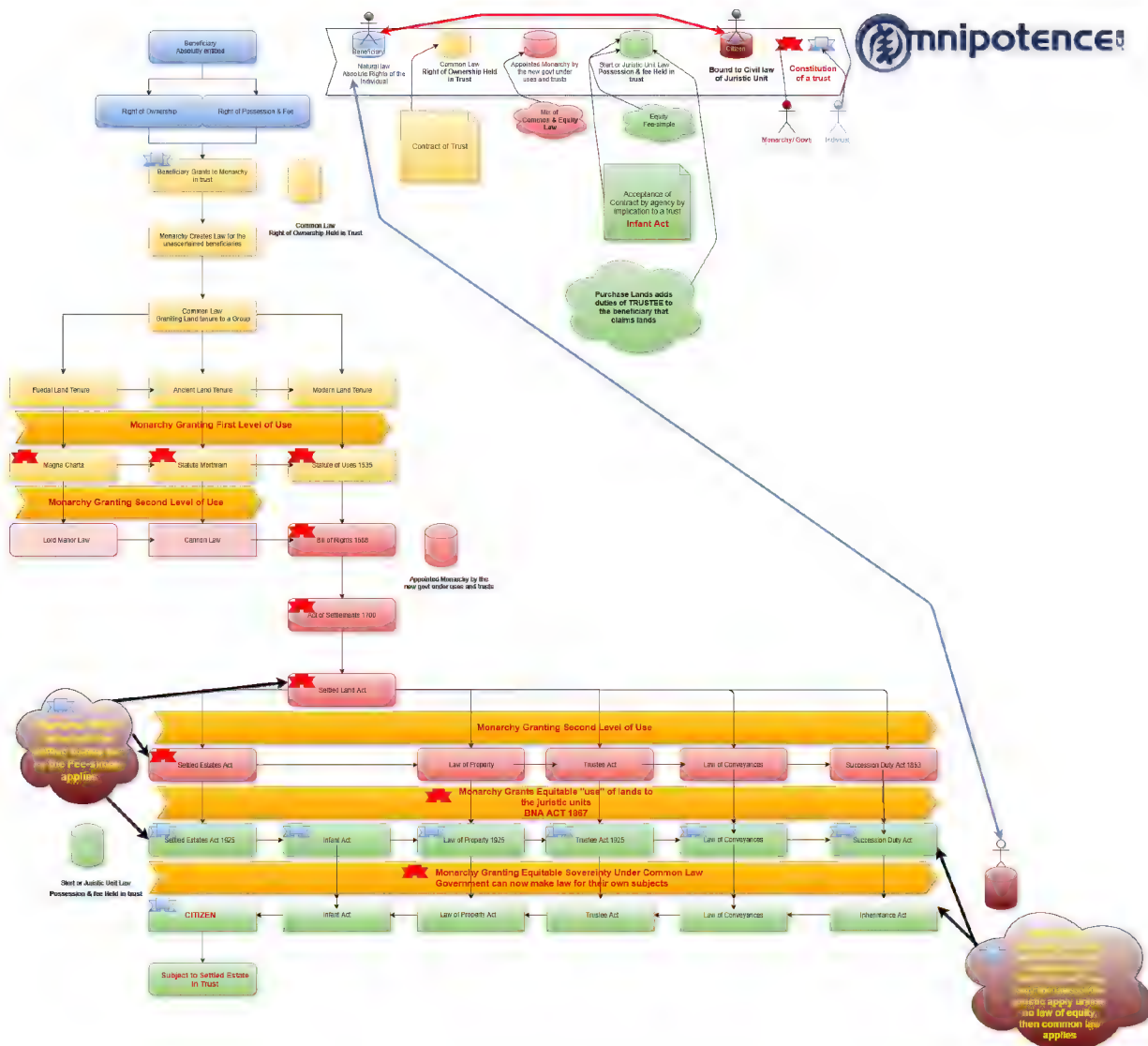
“No remitter if one estate be at common law and other under stat of use.”

Settled Lands Act 1925 (equity) “so long as the settlement is subsisting, be transferred or created by the estate owner for giving effect to any equitable interest or power under the settlement.”

Through the research of law now time immemorial one will notice that the common law from 1086 still applies today, and that all common law attaches to the this era of land tenure. Equity only creates laws for its subjects(the fiction/trust), within the fiction (trust) itself, and no one in equity is directly subject to the common law of the monarchy. These are now subjects of the uses and trusts, in equity, as juristic persons that are bonded to a juristic unit!

The hardest part - in my honest opinion - to understand in English law jurisdictions... who or to whom they apply and why. By having a full understanding of the many jurisdictions, and how they work, explains what law one is subject to and what capacity in English law one will fall under. English law only recognizes t equity within their juristic units although the common law is within the inherent jurisdiction of the court, and so can be activated by those acting in their proper capacity.

Learning and understanding English law becomes simple when one looks to the foundations of law first, and then looks into the exact capacity, issue and injuries complained thereof. Only after a full understanding of the foundation rules will this information be able to be comprehended in its basic and correct form, in relation to our natural capacities and original agreements.



What must the fee simple do once notice is given by the settlor who is deforced:

Settled Land Act 1925 sec 16

(7) If an estate owner refuses or neglects for one month after demand in writing to transfer or create any such legal estate, or if by reason of his being outside the United Kingdom, or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the transaction cannot otherwise be effected, or cannot be effected without undue delay or expense, the court may, on the application of any person interested, make a vesting order transferring or creating the requisite legal estate.

*****sec 17 is not till you have the vesting deed*****

Section 17

Deed of discharge on termination of settlement.

(1) Where the estate owner of any settled land holds the land free from all equitable interests and powers under a trust instrument, the persons who in the last or only principal vesting instrument or the last or only endorsement on or annex thereto are declared to be the trustees of the settlement or the survivors of them shall, save as hereinafter mentioned, be bound to execute, at the cost of the trust estate, a deed declaring that they are discharged from the trust so far as regards that land: Provided that, if the trustees have notice of any derivative settlement, [F1trust of land] or equitable charge affecting such land, they shall not execute a deed of discharge until—

(a) in the case of a derivative settlement, or [F1trust of land], a vesting instrument or a conveyance has been executed or made for giving effect thereto; and

(b) in the case of an equitable charge, they are satisfied that the charge is or will be secured by a legal mortgage, or is protected by registration as a land charge, or by deposit of the documents of title, or that the owner thereof consents to the execution of the deed of discharge.

.....

If held by a s quasi trustee in fee simple The very next section explains:

Where the land is affected by a derivative settlement or [F1trust of land], the deed of discharge shall contain a statement that the land is settled land by virtue of such vesting instrument as aforesaid and the trust instrument therein referred to, or is [F2subject to a trust of land] by virtue of such conveyance as aforesaid, as the case may require.

(2) If, in the circumstances mentioned in subsection (1) of this section and when the conditions therein mentioned have been complied with, the trustees of a settlement on being requested to execute a deed of discharge—

(a) by the estate owner; or

(b) by a person interested under, or by the trustees of, a derivative settlement; or

(c) by the trustees of [F3land]; refuse to do so, or if for any reason the discharge cannot be effected without undue delay or expense, the estate owner, person interested, or trustees may apply to the court for an order discharging the first mentioned trustees as respects the whole or any part of the settled land, and the court may make such order as it may think fit.

The act states all requirements are needed and what each party to the conveyance must do.

Part of the 3 certainties.

One must be in possession (100%) of the corpus held in the trust. The title represents the same capacity as the one in possession. The title you receive from the trustees, in possession, will be understood in fee simple “*as absolutely entitled*” (not by purchase or descent). This will activate the right of action within sec. 17 so to terminate the trust in full - after one has first initiated and then subsequently met the requirements of sec. 16. Only after one has the vesting deed and taken possession (fulfilled sec. 16), as absolutely entitled and not by purchase or descent, can one terminate the trust within section 17.

Readable Edition of Coke upon Littleton

Remitter an act of necessity

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Also, a principal cause why such her shall be remitted, is because there is not any person against who he may sue his writ of formedon, for against himself he cannot sue, and none other is tenant of freehold; and for this cause the law adjudges him in his remitter, scilicet, in such plight as if he had lawful recovered that land against another.

Settled Lands Act sec 16

(3)Where a deed or order of discharge contains no statement to the contrary, a purchaser of a legal estate in the land to which the deed or order relates shall be entitled to assume that the land has ceased to be settled land, and is not subject to [F4a trust of land].

How the lands are created into stock when trust created,

36 Undivided shares to take effect behind a [F1trust of land].

(1)If and when, after the commencement of this Act, settled land is held in trust for persons entitled in possession under a trust instrument in undivided shares, the trustees of the settlement (if the settled land is not already vested in them) may require the estate owner in whom the settled land is vested (but in the case of a personal representative subject to his rights and powers for purposes of administration), at the cost of the trust estate, to convey the land to them, or assent to the land vesting in them as joint tenants, and in the meantime the land shall be held on the same trusts as would have been applicable thereto if it had been so conveyed to or vested in the trustees.

(2)If and when the settled land so held in trust in undivided shares is or becomes vested in the trustees of the settlement, the land shall be held by them (subject to any incumbrances affecting the settled land which are secured by a legal mortgage, but freed from any incumbrances affecting the undivided shares or not secured as aforesaid, and from any interests, powers and charges subsisting under the trust instrument which have priority to the trust for the persons entitled to the undivided shares) [F2in trust for the persons interested in the land].

(3)If the estate owner refuses or neglects for one month after demand in writing to convey the settled land so held in trust in undivided shares in manner aforesaid, or if by reason of his being outside the United Kingdom or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the conveyance cannot otherwise be made, or cannot be made without undue delay or expense, the court may, on the application of the trustees of the settlement, make an order vesting the settled land in them [F2in trust for the persons interested in the land].

(4)An undivided share in land shall not be capable of being created except under a trust instrument or under the M1Law of Property Act, 1925, and shall then only take effect behind a [F3trust of land].

(5)Nothing in this section affects the priority inter se of any incumbrances whether affecting the entirety of the land or an undivided share.

Trust law requires 100% of the trust must be in your possession. Stock to the land trust

must also be identified, The requirements for the stock in freehold, by disseisin, requires that the settlor to confirm how much stock one is entitled to - this requires the settlor to prove the ownership rate plus the succession duty rate. The common law is the contract to the lands and equity is the trust and the shares in the corporation. There are 2 agreements; the contract and the trustee.

- The Ownership Rate Act is for the purpose of joining the corporation/person with the individual waste that one contributes to daily and thus, in the eyes of common law jurisprudence is understood as the method to which one is injuring their own self.
- The Succession Duty Rate is for joining the waste measured within the exact lands claimed. It is the accounting done in fee simple, against their personal capacity, that measures the amount of waste made to the lands and hereditaments that are held within metes & bounds, in trust.

Reversions, remainders, with contingent future interests, that are mirrored in equity, have the exact same rules as the contract held in the common law. The change becomes evident if one is acting within the trust and/or when one is acting in the capacity of settlor. Right of entry is annexed to reversionary interests yet is not construed to be an absolute right so must be presented first before a court of competent jurisdiction in order to get a vested interest in the future. Reversions and remainders can become very complicated, and tricky, when combined with the rights subject to in common law, and the capacities in which they are represented and thus, understanding jurisdictions will be the area of law one needs to study in order to find the correct answers.

□ [Here is a great course on property law within equity by Josh Blackman. I suggest reviewing the first chapters up to and including chapter 16](#)

The above video is the default rules to remainders and reversions and how they work within English law. Right of reverter, right of entry and vested rights are explained in exacting detail. This is great information to start with BUT one must first understand that these videos are speaking within the laws that govern only fee simple., Only the default rules apply in fee simple and one must look to specifics concerning your exact capacity and issue. It is recommended to look into the specifics only after one understands the basic default rules for each area of law, and the jurisdiction that makes up that agreement so to fully understand the agreement and laws surrounding the many uses and trust laws within uses and trust of English law.

Why is the law of property for trustees only... those with a use for a fee-only

as juristic units?

(4)An undivided share in land shall not be capable of being created except under a trust instrument or under the Law of Property Act 1925, and shall then only take effect behind a [trust of land].

The law of property and trustee acts are used only to enforce one's right to the Settled Lands Act. They are not your duties in the law of property or trustee acts unless you are in possession of the corpus of the trust holding a right of possession. These laws are the duties for those in possession of part the corpus of the trust, while acting as trustee to the lands in trust.

When a “thing” goes into trust, the “thing” now in trust is vested in the trustee. The “thing” in trust requires a value to be attached so to be able to determine what percentage is calculated between the trustees and beneficiaries when measured against the asset given in trust to one another.

Everyone and “thing” that has rights and duties to a trust gets a fee from it, yet fee simple have only a use for a fee. The fee simple’s only right is what value they can create from the sale, lease and mortgage of the “things” held in trust. The value one can create from the use, not the “thing” [in trust] itself, for the trustee to take what is in trust, out, would be theft and fraud since the trustee is in a contract as trustee to return it once a certain “thing” happens.

“Things”

Things in English law can be anything that has evolved from the common law of the land. The land was given away (corporeal hereditament) in order to be part of the group of equity and follow those rules that the group has accepted. The group has only a use of the lands (corporeal) and all things on it (incorporeal hereditament). “Things” are all things that come from the lands or lands themselves in trust as hereditaments. Things within the meaning of English law include a vastness of tangible things, actions, acts of law, basically any “thing”.

(Picture Blackstone Commentaries Vol 2 . page 17)

HEREDITAMENTS then, to use the largest expression, are, of two kinds, corporeal, and incorporeal. Corporeal consist of such as affect the senses; such as may be seen and handled by the body: incorporeal are not the object of sensation, can neither be seen nor handled, are creatures of the mind, and exist only in contemplation.

CORPOREAL hereditaments consist wholly of substantial and permanent objects; all which may be comprehended under the general denomination of land only. For *land*, says sir Edward Coke^c, comprehendeth in it's legal signification any ground, soil, or earth whatsoever; as arable, meadows, pastures, woods, moors, waters, marishes, furzes, and heath. It legally includeth

English common law is a trust (monarchy) within a trust (government) within a trust (citizen) to which the first and second level, to the trust, get the trustee fees; being monarchy and government. The citizen [unwittingly] volunteers to receive only a use for a fee, as a civil right, and this right implores the fee-simple to sell, lease and mortgage lands, and hereditaments, to circulate their notes of promise (money). Banks were given that right to mortgage lands (as a middleman) so to facilitate trade within equity. Banks are performing a function of government yet due to how the equity functions, the rules that these banks are bound to are subject to the secret charters created by fee simple subjects, not the governments, so to funnel funds to the lord manors, of the feudal tenure system, which are today the elite class of fee simple subjects i.e the 'secret societies'.

Secret societies are not secret since the secret is the privity of the English law system. Once one learns the history, what laws have been changed to achieve a certain goal, one will come to understand that English law has only changed the names of the class of subjects and thereby has granted more powers to this same class of people under a different name; it has been this same class of people that have been in charge since far before the statute of uses of 1535.

The secret is that these trustees control the uses and trust as lord manors of the feudal land tenure. Additionally these same people create the faiths, a the cestui que trust, and the corporations which removed the monarchy during the great revolutions. This group then appointed a new monarchy as trustee as this was the most productive method in which to satisfy the the common law of this time so to create the needed laws to invoke equity. After the Great Revolutions they were able to act in a legal, not lawful

sense, within equity itself, (only a use), and thereby not injuring the common law contract established beforehand (this ties the common law contract to the acceptance of it now found in equity)., This circumvents the common law contract via the creation of a new jurisdiction and still satisfies the monarchy's right to keep the fee and continue assumed ownership (This had to be considered in order for the foundation of common law rules to be in force so to initiate the force & effect of equity). This allows the governments to assume 'use' ownership, not only over the lands themselves but all those within that territory who are now subjects to an equity agreement in which they did not intend to create or were made privy to. .

Most of the lord manors today are those found in the highest forms of government, and are holding oaths of judges (not all judges and government), and why one must use the proper law that serves to restrict those by the law that binds that individual. Equity can not make common law a sham and, common law can not create a sham like the concept of equity. If common law was a sham it would make equity lose by default, so equity must comply with the common law. Equity uses undue influences to get one to bite into the apple of equity. As soon as one takes that bite, one must then revoke that agreement within the rules of English law since that is the agreement we bit into and accepted.

Section 106

Prohibition or limitation against exercise of powers void, and provision against forfeiture.

(1)If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and partly after, the commencement of this Act a provision is inserted—

(a)purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life or statutory owner to exercise any power under this Act, or his right to require the settled land to be vested in him; or

(b)attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising or to put him into a position inconsistent with his exercising, any power under this Act, or his right to require the settled land to be vested in him; that provision, as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void.

(2)For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any such power or right as aforesaid shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power or right, discharged from liability to determination or cesser by or on his exercising the same.

(3)Notwithstanding anything in a settlement, the exercise by the tenant for life or statutory owner of any power under this Act shall not occasion a forfeiture.

<https://www.legislation.gov.uk/ukpga/Geo5/15-16/18/section/106>

Effects of settled Land Act

Chupryk (Re), 1980 CanLII 2482 (MB CA)

This is a valuable power that was introduced in 1925. A tenant for life may spend existing capital money on carrying out any .of the improvements authorized by the Act, but he had no power under the old Settled Land Acts to borrow new money on mortgage for the purpose, though he could raise a loan under the Improvement of Land Acts with the approval of the Ministry of Agriculture and Fisheries.

The Act of 1882 was amended in small particulars by further statutes passed in 1884, 1887, 1889, and 1890, but its policy has stood the test of time, and though it has now been repealed and replaced by **the Settled Land Act 1925, its general principles still continue to govern the rights and the liabilities of a tenant for life under a strict settlement.**

<https://www.canlii.org/en/mb/mbca/doc/1980/1980canlii2482/1980canlii2482.html?searchUrlHash=AAAAAQAYInNldHRsZWQgbGFuZHMgYWNoIDE5MjUiAAAAAAE&resultIndex=1>

Supporting Documents for this chapter:

- □2 A Law of Property Act 1925
- □2 B The Real Property Acts, 1874, 1875 & 1876
- 37 & 38 Vict Cc 33 37 57 78 Settled Estates Act

LAW REFORMS AND REPEALS

Many people are not sure of the rules of repeals, such as who can or can't repeal laws,, for what reason or how this applies to the whole of English law.

The rules:

- Only the creator can repeal the law they created.
- The laws created only apply to the subjects of the creator.

To deal with this in parts we will attempt to simplify repeals; the monarchy and only the monarchy can create laws within the English law territories. Not until the monarchy offers a grant to another entity will that entity have the right to promulgate laws under the original grant offered. In other words, only the monarchy can write and repeal the common law to which once the entity (juristic unit) has received enough powers granted by the monarchy to legislate law, can the juristic unit have the right to create their own laws. The new laws created by the juristic unit will only apply to themselves and those whom are their subjects. The juristic unit is restricted in a territorial sphere of law, and the juristic unit will only possess the powers and authority granted to them within the original grant from the monarchy. If the monarchy's original grant did not include that transfer of power then the power was not inferred, and thus the juristic unit does not have the power to legislate laws.

Means and ends - The original issue in law is written for a certain issue in time. For example in 1535 when a law was created, it was to rectify an exact issue that needed attention within that time in law. The law being created was for an exact issue which always dealt with a particular individual (capacity) in law. Now if this exact same issue, with the exact same capacities, is presented sometime in the future i.e. where the same issue, to the same capacity, to the same "thing" written in law is again noticed, then that law from 1535 is resurrected, even if before it was understood as repealed.

To look at it another way. All those in equity are construed to be trustees. A settlor is not in equity because for obvious reasons they are not acting in the capacity of a trustees. Equity jurisdiction only creates laws for citizens (cestui que use) as trustees to the cestui que trust. Common law makes the laws to govern the LAND. The contract agreed to between the monarchy and the settlor is of the common law which grants to the juristic units the powers to legislate matters of equity. Equity is the grant from the monarchy that bestows the rights for the trustee to sale, lease and mortgage lands in trust.

Interpretation Act.

44. Where an enactment, in this section called the "former enactment", is repealed and another enactment, in this section called the "new enactment", is substituted therefor,

(h) any reference in an unrepealed enactment to the former enactment shall, with respect to a subsequent transaction, matter or thing, be read and construed as a reference to the provisions of the new enactment relating to the same subject-matter as the former enactment, but where there are no provisions in the new enactment relating to the same subject-matter, the former enactment shall be read as unrepealed in so far

as is necessary to maintain or give effect to the unrepealed enactment. [emphasis added]

Law reforms are the best source to investigate as to how a specific territory created and then reformed its laws, for its subjects, based on the laws of the original land tenure grant. The law reforms explain the original grant and its history which traces the original grant to that specific juristic unit. Some territories have created and repealed many areas since they were furnished with the ability to create and repeal their own laws, and as a consequence one will need to study more than one reform document in order to properly assimilate all the laws legislated, from the time of the original grant until today.

Coke upon Littleton

Pg 511 pdf

But since Littleton wrote, **all uses are transferred by act of parliament into possession**, so that the case which littleton here puts is thereby altered. *Yet it is necessary to be known what the common law was before the making of the statute*, [otherwise the application of the statute could not be discovered]

nota. **A use is a trust or confidence reposed in some other, which is not out of the land, but as a thing collateral thereto and annexed in *privity* to the estate of the land**, and to the person touching the land, *scilicet*, that Cestui Que us shall take the profit, and that the ter-tenant shall make an estate according to his direction. So that cestui que use had neither jus un re nor jus ad rem, but only only a confidence and trust, for which he had no remedy by common law, but for breach of trust his only remedy was by subpena in chancery.

The following are 2 reforms from Canada, one from British Columbia and the other from Saskatchewan. A 3rd from Australia is also included in this discussion. eforms of all types can be found on Successors.ca which includes treatises, case law and law reviews.

The course will be reviewing the finer points of all of these areas and documents in English law.

Repeals and their effect is part of the Estates in reversion course, level 1.

Supporting Documents for this chapter:

- 13 A LAW REFORM COMMISSION OF BRITISH COLUMBIA REPORT ON THE LAND (SETTLED ESTATE) ACT LRC99 NOVEMBER 1988
- 13 B The Status of English Statute Law in Saskatchewan law reform commission of Saskatchewan
- 13 C Australia Reform on Legal Estates and Trusts of Land chapter 6

HOW TO REMOVE BEING SUBJECT

TRUST LAW

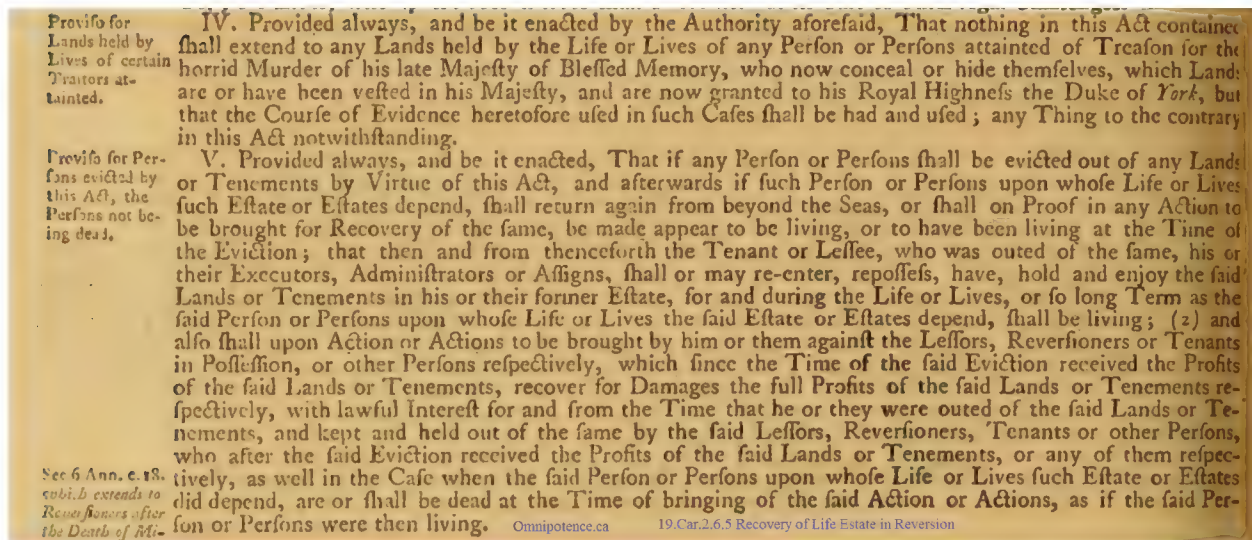
Now you have the basics to English land Law and its reform along with repeals it is time to look at how a trust within a trust within a trust affects the one in possession of the thing in trust while getting familiar with the levels of jurisdiction and how they are used.

In English Law there is always 2 factors, the “**thing**” and the “**person**”. It entitles the right to that thing or not, if one only has a use of the thing, one is a trustee.

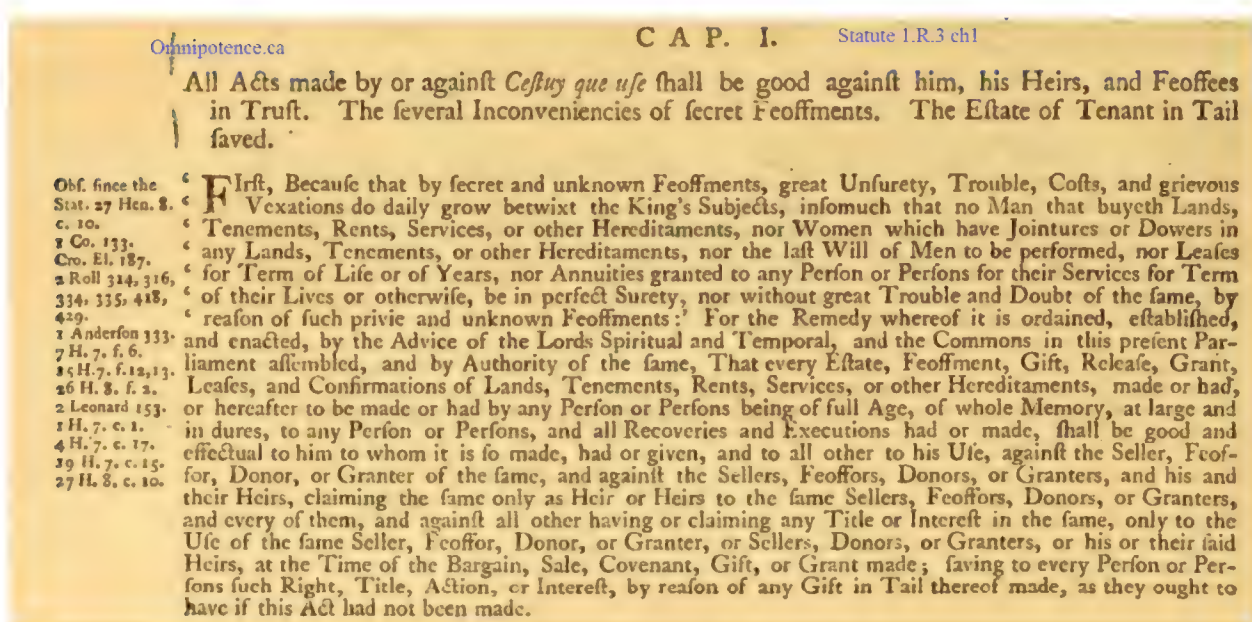
To have jurisdiction the “thing” being lands must move into the jurisdiction (possession), the person must also live within that territory, this gives possession over the citizen as the municipal agent to municipal Law as Cestui Que Vie, the express trust created.

The Cestui Que act represents the rights of the citizen created by the monarchy 19.Car.2 chapter 6, Cestui Que USE is moving the people into the uses and trusts jurisdiction of equity, chancery.

Picture 19 car 2 ch 6 sec 5



Picture 1 R 3



The contract is common Law, created by the Domesday book 1086 as shown below and continues today by Law of descent within common Law along with the creation of municipal corporations with 19.car.2 ch 6 now includes by purchase.

The doctrine of **descents** and **purchases** is combining the original Laws of descent from pre 1535 with the Laws of purchase enacted by the statute of use 1535, this simplifies the test in Law for descents and purchase, all those in by descent and purchase as fee-simple "purchase" from other trustees in equity, where the settlor does

not purchase lands, the test in equity is straightforward, did one purchase the property, or did the one you received the “gift” from purchased the “thing”.

Descents and purchase is a test in Law, their rights, purchase and descent is the test to verify one is in equity, then rely on the right of either descent or purchase as fee-simple tenant for life to enforce that agreement.

The course will deal with all these areas in depth and not is too broad to get into here, it is much simpler to learn the basic default rules to each area of Law then move into specifics and where we will continue now.

Picture of Holdsworth persons of property...

fields.³ The villani, the cottarii, and the servi mentioned in the questions asked by the Domesday commissioners⁴ probably represent, roughly and only roughly, the dependent classes whose labour cultivated the lord's manor.⁵ No question was asked as to the extent of their holdings, as in the case of the freemen and the sochemanni. We can see that the slaves of Anglo-Saxon law are still known to the law. They are sharply distinguished from even the poorest villanus or cottarius.⁶ In fact the villanus of Domesday might be a man of property. We are far as yet from the legal doctrines which will make the villein a serf—which will, while in some respects assimilating him to a slave, admit that he has public duties, and that he is free as against all except his lord.⁷ No doubt the Conquest began the process which, degrading the villein on the one hand and raising the slave on the other, created the peculiar villein status of later law.⁸ The process has not yet gone far. We still see in Domesday the old distinctions of ranks, many of which were destined to disappear before the generalizations of royal justice.

All “things” including individuals falls into a territory jurisdiction along with a rule of Law within the Law of domicile (picture of birth domicile below) and all agreements of those within that territory, we will work through the basics of jurisdictions then move into the different jurisdictions within the territorial jurisdiction as agents of English Law with a brief review on how one becomes an agent to municipal Law.

§ 104. General Remarks. — Every person receives at birth a domicile, technically known among modern jurists as “domicil of origin.”¹ Says Lord Westbury in *Udny v. Udny*: “It is a settled principle that no man shall be without a domicile; and to secure this result the law attributes to every individual as soon as he is born the domicile of his father if the child be legitimate, and the domicile of his mother if illegitimate. This has been called the domicile of origin, and is involuntary.”

We have seen that *origo* and *domicilium* in the Roman law were distinct ideas, and the collocation of them in the phrase *domicilium originis* would have implied a contradiction.²

3 jurisdictions = 3 grants required, or 3 Laws, 3 agreements, for 3 different things,

- Territory
- Subject Matter.
- Personal

The English Law realm proclaims ownership to the lands yet as trustee, is annexed to the throne since 19.Car.2.ch 6 within the British monarchy (the change into chancery

from the English monarchy), the lands are in trust same as the throne and crown corporation.

By granting the lands, grants territory plus both subject matter, and personal jurisdictions, both subject matter and personal jurisdictions are based on the territorial jurisdiction, granting jurisdiction to the one proclaiming ownership as trustee (monarchy).

Example: One that injures another in another's territory other than his/her own and then goes back home, this is a conflict in territorial jurisdictions, in Law. Where does one get the remedy? Private International Law and the conflict in English land Law deals with this issue in its own way within English Law jurisprudence, since the English subject within that territory, is the defining factor to territory jurisdiction as well who writes the Laws, who is subject and the remedies available.

If the person is still in his/her host state/province, only that state/province can deal with the remedy, there are exemptions within English Law if that person returns to the home residence, then one will have to make a claim in the home territory of that individual or extradite the person back to the territory of injury for remedy.

The subject matter and the thing in Question can flip these rules on its head, especially in trust Law, if the person is holding a thing in trust in Paris, and lives in Florida, one is required to claim where the thing in trust is, not the personal jurisdiction of the trustee.

Territory is always used to determine what Law applies to an individual and/or "thing" this is called finding the seat in Law, most cannot see how exact English Law is for the 3 jurisdictions and who/what falls into those jurisdictions and why.

When one grants territory, this is acceptance as a subject of that territory, why subject matter AND personal jurisdictions are in fact presumed till you refute the territorial land trust and can prove what is required within the jurisdiction that holds the lands in trust.

The gift of lands and taking that gift in trust as trustee and life tenant (Cestui Que use) is why one is subject and why one is a life tenant and not settlor and why one will not get recognize as settlor till one fulfills what is required to be settlor, all citizens are acting as trustee, the only rights of the trustee in equity is only an equitable benefit in fee-simple as life tenant.

Every act of Law and agreement must be put to the 3 certainties test, the test will tell you if the agreement is a contract or is a trust, what was given, and who is the settlor

beneficiary and the trustee to it, without doing this test you will not get the correct answer.

The settled lands act moves the lands into equity, giving the rights and duties to those with only a right of possession as life tenant to sell lease and mortgage lands in trust as trustee nothing more. The constitution of a trust is only after the 3 certainties has happened and has constituted the trust.

The bill of rights 1688 gives the monarchy the estates and ability to create Law, BNA act 1867 is the monarchy giving the new municipal corporations the power to be sovereign within their own sphere, the monarchy in 1700 created land settlements and then the municipal corporations Act to manage the lands in trust to the monarchy created by the juristic units.

By 1985 the new juristic units of the new municipal corporation's tenure (modern land tenure) have the ability from the grant of the monarchy to create their own constitution and can now create all Laws for their own subjects only, this new sphere can be found within the statute Westminster 1932.

After 1932 the juristic units have the power to create Law and be sovereign in their own sphere, the Statute Westminster 1932 granted the last of the powers needed, and now the monarchy is no longer needed to make Law, yet is the head and representative of the common Law land tenure, equity can not live without common Law.

All municipal Corporations are based on a state and federal jurisdiction, this 2 tier system, depends on the function of government (what they do for a living), what one agrees to within in the group asking where one lives and then ask where one works explains the capacity to the land in the BNA Act sec 91 or 92 division of powers. You will notice even the USA follows the rules of the BNA Act, this test of where do you live and what you do for a living within that territory is all anyone needs to know what Laws and agreements one is bound to within any Law and jurisdiction.

All municipal corporations were created from the same monarchy grant, W&M 5&6, this means it binds all municipal corporations to the common Law land tenure.

Private International Law and the Conflicts in Law is the foundation to all English Law and is the Law everyone has agreed to for foundation rules of Law and who those Laws apply to and why, (which once you read it and understand it I think you will also agree). This is the common Law rules of time incorporating into equity, from the natural acts of man till today.

The Law of domicile looks and feels the same as private international Law, yet only applies to those within equity, equity uses private international Law to be the foundation to ALL English Law today.

Every area of Law within equity was created from private international Law, Law of nations, Law of agency, basic English land Law, Law of domicile, Law of conveyance, property Law, trustee Law, each of these jurisdictions in English Law make up the pieces of “sticks” to make up the whole “stick”, the whole of equity, and every agreement has a piece of “stick”: in it to make up the whole “stick” (agreement) to equity AND common Law.

Common Law in its strictest definition is the common Law of a certain group, not of the world and everyone on it. the lands in trust are English common Law, the use and fee in trust is equity by the juristic units. If one accept lands in trust, you accept English Law and every part of English Law.

Now we have done a quick run through of the basic of English Law let's look at specific areas of English Law, and how certain rights and capacities in English Law can trump the default rules.

The following sections are all equity foundation rules, equity mirrors common Law, the icing that changes common Law only for those in equity, and one must use equity against those in equity, when reviewing the following content look for the default rules PLUS anything that can trump those foundation rules, once one gets further into this introduction we will get into the more specific areas of English Law and how this exact situation of being settlor to a land trust you did not intend to create is in fact real, how one understands how to get the land trust returned in a recognized manner without injury to you.

Express Trust.

□ [Trust Law - Express Trust: Declaration \(courtesy of Shaveen Bandaranayake\)](#)

- Keep in mind the following:
- Objective test on the by standard!!!!

- What is the settled lands act?
- Can't last forever!
- If absolute gift NOT BOUND BY TRUST!!!!
- Why the Cestui Que use has no rights.
- Remember this is just for the Cestui Que USE, not the trust itself,
- how you give acceptance, to the trust and how you become a trustee to the thing you granted in trust, lands, and all things attached.
- Don't forget the intention to create, you MUST have the intention to create at the TIME THE TRUST WAS CREATED: your birth.

□ [Trust Law - Express Trusts: Constitution \(courtesy of Shaveen Bandaranayake\)](#)

- Keep in mind:
- Is the constitution defective? Did the settlor intend to create the trust?
- Has settlor done everything in his/her power to constitute the trust?
- Equity will not force a gift!

□ [Trust Law - Promises to Create Trusts \(courtesy of Shaveen Bandaranayake\)](#)

- Privity must exist to enforce it. (don't forget as settlor with no intent)

□ □ [The Law Simplified Property Law - Proprietary Estoppel \(courtesy of Shaveen Bandaranayake\)](#)

□ [Property Law - Leases: Creation & Termination \(courtesy of Shaveen Bandaranayake\)](#)

- [Legal](#) vs equitable leases....
- Both legal and equitable are in trust,
- anything wrapped in English Law is in trust.

□ [The Law Simplified Commercial Law - Introduction to Agency \(courtesy of Shaveen Bandaranayake\)](#)

With trust Law, The monarchy is the principal in English Law, government is the agent of the monarchy, (you are not determined as absolutely entitled), once government (juristic units) get the power from the common Law to create Law, the citizen is the agent to the juristic unit, the government is the principal to the citizen.

English common Law is the first level of trust, Equity is the second level of trust within a trust, the citizen is another level of trust within 2 other trust agreements, A corporation requires agents, without agents a corporation can do nothing without the agent performing those duties of that corporation.

Is the settlor not the 3rd party in the English Law land tenure?

Monarchy grants to government, government grants to the citizen, citizen volunteers as trustee to a trust the settlor did not intend to create, due to the agency and accepting the thing in trust as agent and not settlor.

Trust for the thing, and an agency for the person, a person is not a trust.

3 main requirements to determine any Law and its effects must be exact, territory (where it happens and what Law binds it), subject matter (thing and the Law to that thing in the capacity of the person within the territory) and personal (parties involved)

Revoking the Cestui Que use is an agency (contract), ending the trust is a “trust”.

Terminating the trust is 2 stages, getting the possession and the fee of the trust as settlor, then end the trust as settlor.

The right of entry for possession lands in trust, you must be in reversion, the only injury to get out of fee-simple into reversion with no intent to create the trust is by

deforcement, and then you would be in reversion with an interest to things in remainder, remainder is to a "thing" you do not have 100% of the "things", there is a remainder in trust. A trust is not complete till you have 100% of the trust and it confirms the trust as terminated, meaning you released the trustees, the trustee (s) no longer have any rights or duties to that thing anymore.

Picture Readable edition of Coke upon Littleton 277b

Disseisin, abatement, intrusion, deforcement, and usurpation distinguished.

[277 a]

Disseisin is a wrongful putting out of the person who is actually seised of the freehold. Abatement occurs where a man dies seised of an estate of inheritance, and between the death [of the ancestor] and entry of the heir, a stranger interposes himself, then he is said to abate, diminish, or take away the freehold in law descended to the heir.

[277 b]

Intrusion is where the ancestor dies seised of any estate of inheritance expectant upon an estate for life, and then tenant for life dies, and between the death of the tenant for life and the entry of the heir of the reversioner a stranger interposes himself and intrudes upon the freehold. Deforcement comprehends not only the aforementioned, but every other holder of land whereunto another man has right, be it by descent or purchase. Usurpation is where a stranger who has no right presents to a church, and his clerk is admitted and instituted, he is said to be an usurper, and the wrongful act which he has done is called an usurpation.

remainder is also where you are beneficiary to a gift from another,

reversion is where what was given is yours and you want it back. Reversion carries all the rights and duties, even in equity reversion would revert you to those rights and duties and capacities,

Readable Edition of Coke upon Littleton 144a

*Fee-farm rent,
what ;*

Such a rent is a rent charge.] It is called a rent charge because the land for payment thereof is charged with a distress. If it be to the whole value of the land, or to the fourth part of the value, then the rent is called a fee-farm.

*and though dis-
tress not inci-
dent, feoffor en-
titled to writ of
annuity, if
grant be by
deed.*

[144 a]

He is without remedy.] Note, that upon a reservation of a rent upon a feoffment in fee by deed indented, the feoffor shall not have a writ of annuity, because the words of reservation, as *reddendo, solvendo, faciendo, tenendo, reservando, &c.* are the words of the feoffor, and not of the feoffee, albeit the feoffee by acceptance of the estate is bound thereby.

*Rent may be
reserved on a
conveyance to
uses, or out of
reversion.*

And where Littleton puts his case, when a reservation is made upon an estate that passes by livery, the same law it is, if a man at this day bargains and sells his land by deed indented and enrolled according to the statute, a rent may be reserved thereupon ; for albeit an use had only passed by the common law, yet now by the statute of 27 H. 8. cap. 10, the use and possession pass together, and so it was adjudged. And so it is of a grant of a reversion or remainder, and any other conveyance of lands or tenements, whereby any estate passes.

III. An estate in *reversion* is the residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him¹. Sir Edward Coke² describes a reversion to be the returning of land to the grantor or his heirs after the grant is over. As, if there be a gift in tail, the reversion of the fee is, without any special reservation, vested in the donor by act of law : and so also the reversion, after an estate for life, years, or at will, continues in the lessor. For the fee-simple of all lands must abide somewhere ; and if he, who was before possessed of the whole, carves out of it any smaller estate, and grants it away, whatever is not so granted remains in him. A reversion is never therefore created by deed or writing, but arises from construction of law ; a remainder can never be limited, unless by either deed or devise. But both are equally transferable, when actually vested, being both estates *in praesenti*, though taking effect *in futuro*.

THE doctrine of reversions is plainly derived from the feudal constitution. For, when a feud was granted to a man for life, or to him and his issue male, rendering either rent, or other services ; then, on his death or the failure of issue male, the feud was de-

¹ Skinn. 341. 3 P. Wm. 258.

² 1 Inst. 142.

³ Co. Litt. 22.

Fee-simple can only give what it has, reversion in equity would revert one back to a fee-simple interest you gave up in fee-simple. Reversion is common Law, terminates the common Law grant.

THIS is the primary sense and acceptation of the word *fee*. But (as sir Martin Wright very justly observes¹) the doctrine, “that all lands are holden,” having been for so many ages a fixed and undeniable axiom, our English lawyers do very rarely (of late years especially) use the word *fee* in this it's primary original sense, in contradistinction to *allodium* or absolute property, with which they have no concern ; but generally use it to express the continuance or quantity of estate. A *fee* therefore, in general, signifies an estate of inheritance ; being the highest and most extensive interest that a man can have in a feud : and, when the term is used simply, without any other adjunct, or has the adjunct of *simple* annexed to it, (as, a fee, or, a fee-simple) it is used in contradistinction to a fee conditional at the common law, or a fee-tail by the statute ; importing an absolute inheritance, clear of any condition, limitation, or restrictions to particular heirs, but descendible to the heirs general, whether male or female, lineal or collateral. And in no other sense than this is the king said to be seised in fee, he being the feudatory of no man^m.

2.Bl.Comm.106

D E S C E N T, or hereditary succession, is the title whereby a man on the death of his ancestor acquires his estate by right of representation, as his heir at law. An heir therefore is he upon whom the law casts the estate immediately on the death of the ancestor : and an estate, so descending to the heir, is in law called the inheritance.

T H E doctrine of descents, or law of inheritances in fee-simple, is a point of the highest importance ; and is indeed the principal object of the laws of real property in England. All the rules relating to purchases, whereby the legal course of descents is broken and altered, perpetually refer to this settled law of inheritance, as a *datum* or first principle universally known, and upon which their subsequent limitations are to work. Thus a gift in tail, or to a man and the heirs of his body, is a limitation that cannot be perfectly understood without a previous knowledge of the law of descents in fee-simple. One may well perceive, that this is an estate confined in it's descent to such heirs only of the donee, as have sprung or shall spring from his body ; but who those heirs are, whether all his children both male and female, or the male only, and (among the males) whether the eldest, youngest, or other son alone, or all the sons together, shall be his heir ; this is a point, that we must resort back to the standing law of descents in fee-simple to be informed of.

* Co. Litt. 18.

□ [Commercial Law - Agency by Ratification \(courtesy of Shaveen Bandaranayake\)](#)

- how everyone ratifies the land tenure of the Domesday book of 1086

Notification of agency is all around one! One also proves ratification of agency every time one speak do you not? Refer to Potvin case Law. What you claim and how you claim it, is stating your agency, or if your sui juris, (based on territory first and the right of ownership, 2 rights!)

□ [[Commercial Law - Agency by Estoppel \(courtesy of Shaveen Bandaranayake\)](#)]

- Notice the requirement for agency by estoppel, notice how all this is for the trustees to the land trust agreement and how one is making themselves subject these are the default rules, and the exact thing and capacity in which that thing is claimed can change every part of these areas of Laws.

□ [[Commercial Law - Agency by Necessity \(courtesy of Shaveen Bandaranayake\)](#)]

- Keep in mind these are all default rules and must look to the exact issue to see how and if it changes. Remember rules of purchase and descent.

□ □[Commercial Law - Sale of Goods: Passing of Property \(courtesy of Shaveen Bandaranayake\)](#)

□ [[Contract Law - Consideration \(courtesy of Shaveen Bandaranayake\)](#)]

All these rules are the default rules that apply to all in fee-simple only, therefore if you make an agreement outside English Law, with someone in English Law, you will not get a remedy for it, since the English Law courts will find it not enforceable and only English Law applies and has jurisdiction over the fee-simple person within the English Law of equity.

If one makes an agreement within the confines of English Law to assure the subject in fee-simple is not breaking their Law, then the English courts will enforce the agreement between one not within the English Law jurisdiction against the fee-simple within that jurisdiction, the jurisdiction of the courts applies only against the fee-simple person, the thing in Question must also be in the jurisdiction of the English Law for the court to have subject matter and territory jurisdiction over that thing.

If English Law only has jurisdiction over the person, the person is the only thing that jurisdiction can control and have authority over.

The following books are included to help understand the basics to the specific Cestui

Que Vie trust and will also help show how this specific trust changes some default rules to English Law as a whole.

Supporting Documents for this chapter:

- 14 A Treatise on trusts and trustee vol 1
- 14 B Treatises on trusts and trustee vol 2
- 14 C Trustee Act 1925

TRUST LAW OUTLINE

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CHAPTER 1: INTRODUCTION TO THE LAW OF TRUSTS

TRUST: It is an equitable obligation the binds the *trustee*, to deal with property owned by him, *the trust property*, for the benefit of persons, known as *beneficiaries*, of whom he may be one, and anyone of who may enforce the obligation **OR** for the furtherance of certain purposes, such as *charitable purposes*.

Knowledge Objectives: The Definition of a Trust

- (i) Difficulty in providing a definition for a trust
 - The trust has developed over hundreds of years and adapted to a wide range of situations
- (ii) Flaws in the attempted definition of “trust”
 - Some definitions are too narrow and some too encompassing, making them difficult to comprehend
- (iii) Definitions

SETTLOR: a person who creates an express trust through expressing an *intent* to create a trust in relation to a specific property and conveying that property to the trustee. The person may also declare *themselves* a trustee of the property they have title to.

TRUSTEE: the person who holds title to the trust property for the *benefit* of the beneficiaries.

BENEFICIARY: the person for whose benefit the trust property is held in trust for persons.

TRUST PROPERTY: the property the trustee holds for the benefit of the beneficiaries **OR** for purposes. The trustee may hold either *legal or equitable* interest in trust property.

TRUST INSTRUMENT: a document which creates an express trust by expressing the intention to create the trust *and* it may describe the rights and obligations of the parties to the trust.

BARE TRUST: a trust in which the trustee has no duties other than taking care of the property and conveying it to the beneficiaries.

DISCRETIONARY TRUST: where the trustee has the discretion/power to determine *which* beneficiaries will receive income from the trust or how much income the beneficiaries will receive.

FIXED TRUST: the beneficial interests have been determined. There is no discretion on the part of the trustee.

TESTAMENTARY TRUST: a trust created by will. The settlor is then referred to as the *testator*.

INTER VIVOS TRUST: a trust created during the life of a settlor as opposed to a created on the death of the settlor through a will.

- (iv) Schematic Diagram of Trusts

TRUSTS				
A. Express Trusts			B. Trusts by Operation of Law	
Trusts for Persons		Trusts for Purposes		C. Statutory
Inter vivos OR testamentary		Inter vivos OR testamentary		
Fixed	Discretionary	Charity	X-Charity	

- A. **EXPRESS TRUSTS:** created by the settlor clearly expressing an intention to create a trust, or implied by the words and surrounding circumstances
- Trusts for Persons:** to be held for the benefit of particular person or a class of persons.
 - Inter vivos OR testamentary
 - Fixed OR Discretionary: *see definitions above*
 - Trusts for Purposes:** to be held for a particular purpose.
 - Inter vivos OR testamentary
 - Charitable
 - Non-Charitable: most non-charitable purposes are not considered valid trusts and the property reverts back to the settlor
- B. **TRUSTS BY OPERATION OF LAW:** trusts that exist because the court has ordered so, even though there may have been no express intention to create a trust.
- Resulting:** property results (goes back) to the settlor.
 - Automatic Resulting Trust:* where the property returns to the settlor, whether or not the settlor had intended for the property to be returned.
 - Presumptive Resulting Trust:*
 - Constructive:** A **constructive trust** is an equitable remedy resembling a trust, imposed by a court to benefit a party that has been wrongfully deprived of its rights due to either a person obtaining or holding legal right to property which they should not possess due to unjust enrichment or interference.
- C. **STATUTORY TRUSTS:** created by statute.

Knowledge Objectives: An Overview of the Administration of a Trust

- ID three issues that need to be addressed when administering a trust
 - Did the alleged trustee accept the role as trustee?
 - What are the obligations?
 - Has the trustee received legal or equitable title to the property, into order for the trust to have come into existence.
- Distinguish duties and powers
 - DUTIES:** obligations of the trustee that they *must do*. Also, there are presumed duties attached to a trustee.
 - A. Duty of Loyalty:** act in the best interest of the beneficiaries.
 - B. Duty of Impartiality:** not favour one or more beneficiaries over other beneficiaries.
 - C. Duty not to Delegate:** not to delegate the carrying out of the trust to other persons.
 - D. Duty of Care:** must manage the property in a way a reasonably prudent trustee would.
 - POWERS:** gives a person permission to do something. The range of possible powers is infinite, constrained only to the extent that powers contrary to public policy will not be valid powers.
 - Powers may be given to any person, not just the trustee. Powers given to a non-trustee

creates an agent and the power is known as a power of attorney.

(iii) ID three duties of trustees

- **A. Duty of Loyalty:** act in the best interest of the beneficiaries.
- **B. Duty of Impartiality:** not favour one or more beneficiaries over other beneficiaries.
- **C. Duty not to Delegate:** not to delegate the carrying out of the trust to other persons.
- **D. Duty of Care:** must manage the property in a way a reasonably prudent trustee would.

(iv) Administrative powers vs. dispositive powers in the context of express trusts

- **ADMINISTRATIVE POWERS:** allows the trustee to manage the property. Includes power to sell, invest and insure the property.
- **DISPOSITIVE POWERS:** allow for the disposition of property. Includes the distribution of income or capital to beneficiaries.
 - **Power of Appointment:** allows for the trustee to choose among a class of persons for a distribution of income or capital.
 - *General:* allows the trustee to make the gift to anyone, including him or herself
 - *Special:* power may only be exercised in favour of one or more persons from a specific list
 - *Hybrid:* anyone exception a specified list or class of persons

(v) Personal powers, fiduciary powers and trust powers

- **PERSONAL POWER:** donee of the power is under no obligation to exercise the power, only obligation is that he or she must exercise in accordance with the terms of the power of appointment
- **FIDUCIARY POWER:** donee of the power is expected to consider the exercise of the power. A settlor who entrusts a power to his trustees must be relying on them in their fiduciary capacity so that they cannot simply push aside the power.
- **TRUST POWER:** the donee *must* exercise the power. Considering is not enough, failure to exercise the power is a breach of trust. There is a *duty* (legal obligation) to exercise the power but the exercise involves a choice.
 - it is a duty to exercise the power – to give income to a beneficiary – but the *power* allows them to choose which beneficiary.

Knowledge Objective: The Taxation of Trusts

(i) Income earned on property held in a trust will be attributed to settlor

- If the settlor retains certain powers (i) the power to determine who will receive income, (ii) the power to revoke a trust or (iii) the power to consent to whom distributions of the property of the trust will be made, then he will be taxed on the income of the trust, even though he will not personally be receiving the income.
 - This occurs because the settlor has not really relinquished control over the property and, in a sense, still retains a benefit from the property
- Usually it would make sense for the beneficiaries to pay the taxes because they are *usually* in a lower tax bracket, however sometimes the settlor may want to retain some control over the trust – even if it means the settlor pays the taxes

(ii) Taxation of Trusts as a conduit

- Trusts are considered a separate taxpayer and therefore a tax return must be filed for a trust and tax paid by the trustees on income earned from the trust property
- Income earned on trust property that is paid or payable to beneficiaries can be deducted from the income of the trust
- Income that is paid to the beneficiaries is treated as their income and they are taxed on it

(iii) Tax rates for *inter vivos* vs testamentary trusts

- Tax concern with *inter vivos* trusts is that a person can create many of them so the income is split and the tax would be for low income – the approach to this is that tax income retained in a trust is taxed at the highest rate for individual tax payers.
- 2016 New tax rules for *testamentary trusts* is that the trusts will be taxed at individual rates for the first 36 months and thereafter will be taxed in the same ways as *inter vivos* trusts.
- Currently taxed at a lower rate

(iv) Capital gains tax implications

- If capital gains tax must be paid, the *Income Tax Act* requires the taxpayer to include one half other capital gain in the tax payers income and the taxpayer pays tax at the applicable tax rate on that amount

(v) Disposition of property for tax purposes

- *Income Tax Act* deals with the fact that capital gains tax is only paid when the property is disposed of by deeming a trust to dispose of property every twenty-one years.

(vi) Charities under the Income Tax Act

CHAPTER 2: HISTORY AND DEVELOPMENT OF EQUITY AND TRUSTS

EQUITY: is now the body of rules administered by our courts of justice which, were it not for the operation of the Judicature Acts, would be administered only by those courts which would be known as Courts of Equity. Equity became a body of rules, with the simple notion of doing what is “fair”, or providing a “corrective” to the law. Trust law was a product of courts of equity.

Knowledge Objectives: The Meaning of Equity

(i) Four different meanings that might be associated with equity

- **Equity as Fairness:** “fairness” and or “justice”
- **Equity as Net Worth:** the amount one retains after creditors have been paid
- **Equity as Correct to Law:** legal rules can work injustices in situations that weren’t anticipated when the rule was created. Courts of equity arguably had their origins in the performance of this corrective law function.

- **Mere Equities:** Defenses to legal actions that were created by courts of equity.

Knowledge Objectives: Medieval Origins

(i) Administrative Beginnings

- Equity courts originated in the 13th century. Complaints were made to the King because the King could provide justice where the courts were unwilling to.

(ii) Development as a corrective law

- The complaints were then delegated to the Chancellor. New situations would arise that could not be remedied by the common law courts because there was no writ available that dealt with those situations. It was in the context of these complaints, the Chancellor began performing equity in the sense of corrective justice.

(iii) Origin of “Equity follows the law”

- Equity follows the law – it took the common law as given and simply acted in response to decisions of the common law courts. This is referred to as “equity follows the law”

(iv) Remedies in personam

- If the Chancellor found in favour of a petitioner, he would make an order that applied to the person and not to the particular property

Knowledge Objectives: Development of the Law of Uses and Trusts

(i) Early world formulation of the “use”

- X would convey property “*to a for the use of b*”
- Use meaning “on behalf of”

(ii) How the “use” was employed in its early development

- “*X to A for the Use of X*”
- **Avoid Feudal Burdens:** use could be employed to avoid burdens of wardship and marriage, if X died the feudal burdens of wardship and marriage did not apply to his children – when the land is put in the hands of A for one’s own use.
- **Avoid Feudal Requirement of Forfeiture for Treason:** rights to land had to be forfeited for treason, this could be avoided by the employment of use since once X conveyed the property to others for the use of X, X would not longer be the legal owner. Treason would not result in forfeiture because X had not property to forfeit.
- **Avoid Creditors:** if creditors sought to claim the rights to land as an asset of X, X did not own the rights to the land.
- **Effect Testamentary Dispositions of Land:** conveying land during one’s life to another for the use of oneself and then, on death, to the use of those to whom one wished to make the gift – defeated that the CL courts would not allow someone, on their death, to make a gift of land.

(iii) Benefit of the early non-recognition of the use

- There was no legal mechanism for enforcing uses, by the courts of Chancellor. A matter of honour and one had to rely on other mechanisms of enforcement.

(iv) Recognition of the use and an example

- Reluctance of courts of law to enforce uses led to appeals to the King to enforce the use. Chancellor began to recognize the use and would make an order against the feoffee to uses (trustee) to comply with the obligations they had agreed to

(v) Reasons for Statute of Use and its effect

- The employment of the use to avoid feudal burdens led to a reduction in the feudal rights to Lords, most notably to the King. The statute was passed and provided that the person in whose favour the use was made become the legal owner of the rights to the land. Relates to the taxing of land.

(vi) Word formulas used to an attempt to avoid the Statute of Use

- Creative ways were found to avoid the effect of the statute.
- Use upon use: "A to B for the use of C in trust for D"

(vii) Reason for the enactment of the Statute of Wills

- Before use upon use, the use could no longer be employed to effect a testamentary disposition of land and so the *Statute of Wills* was created in order to permit a person to make a testamentary disposition of property.

Knowledge Objectives: Describe the Development of Equity

(i) Development of Equity as Corrective Law

- Common law had begun refusing new writs. New situations arose where there could be no remedy by the common law, this led to complaints where litigants felt that they could not get justice in the common law courts and so the Chancellor began performing equity in these sense of corrective justice.

(ii) Administrative Beginnings of Equity

- appeals to the King were made on the basis that the king could provide justice where the courts were unwilling or unable to

(iii) Development of Equity 1500 – 1700

(iv) Development of Equity 1700 - 1900

- Chancery courts become popular and grew significantly, leading to competition between Chancery and common law courts.
- 1650's ordered the abolition of the Chancery courts but survived because could not agree on legislation to transfer the jurisdiction
- 17th century: expanding legal jurisdiction, developing its own substantive law.

- Trusts in the 17th century were changing - not being used just to hold property but also to manage property by giving trustees wide powers.

(v) Development of Equity in Canada

- **Atlantic Provinces:** exercised equity jurisdiction as early as 1751. The merging of law/equity occurring well before the Judicature Acts in 1873
- **QC:** restored civil law system in 1774
- **Ontario:** initially refused equity jurisdiction - eventually due to pressure created a legislative form of equity and established Court of Chancery shortly afterwards
- **West/North:** courts established here were late (already other courts unifying law and equity) and given jurisdiction over both law and equity

(vi) Benefits of Non-Recognition of the Use

- Originally not recognized by the Chancellor or the courts in law. The benefit was that the avoidance of creditors or feudal burdens depended on the law not recognizing the *cestui que use* [the beneficiary] as having any right to title or to property.

Knowledge Objectives: Fusion

(i) Procedural vs Substantive concepts of Fusion

- **SUBSTANTIVE:** the rules of law and equity are merged into a single body of rules
- **PROCEDURAL:** one can apply to a single court following a single court procedure and that could administer both rules of law and rules of equity and apply remedies of the sort that were formerly available in either court of law (ie. damages) or a court of equity (ie. injunction, specific performance)
- Judicature Act: some areas of conflict – rule provides that where the rules of law conflict with the rules of equity, the rules of equity were to prevail.

(ii) Example of the practical effect of distinction

- *Canson Enterprises Ltd v Boughton*

(iii) Current status of debate over fusion of law and equity

- That where there is a conflict the court will resolve it by drawing on concepts from either rules of law or rules of equity where it makes sense to do so, presumably with broader policy considerations in mind

CHAPTER THREE: CAPACITY TO CREATE A TRUST

Knowledge: The Requirements for the Creation of an Express Trust

(i) Five requirements for a legally valid express trust to be created

1. **Capacity:** does the settlor of the trust have the legal capacity to create a trust?
2. **The Three Certainties:** are the three certainties required for the creation of an express trust met?
 - a. *Certainty of intention*
 - b. *Certainty of subject matter; and*
 - c. *Certainty of objects*
3. **Constitution:** Has the trust been constituted?
4. **Formalities:** If there are formal requirements to create a trust of a particular type, have those requirements been met?
5. **Public Policy:** If all of the other requirements for the creation of a trust have been met, is the trust void on the basis that it is for an illegal purpose or contrary to public policy?

Knowledge: Who Must Have Legal Capacity?

THE SETTLOR: the purported settlor must be a **legally** recognized person (individual or corporation), who has an interest (legal or equitable) in the property that he/she purported to make subject to a trust.

THE TRUSTEE: any recognized person can hold title to property. Therefore any person can be a trustee and hold property subject to a trust obligation, even if the person does not have legal capacity to deal with the property. Most trustees will have legal capacity to exercise powers, otherwise they could abide by obligations. Trustee must have title that is to be held in trust.

THE BENEFICIARY: a beneficiary must be legally recognized as a person in order to receive and hold interest in property. The beneficiary must be in existence before he/she can hold an interest but does not need to be in existence at the time the trust is created.

Knowledge Objectives: Main Types of Legal Incapacity

(i) ID the two main types of legal incapacity

- **MINORS:** the law attempts to provide protection by limiting the capacity of minors
- **MENTAL INCAPACITY:** attempts to protect adults from being taken advantage of if they have mental incapacity that makes them unable to appreciate the nature and effect of a transaction they are entering into. It is not the same as mental illness. The question is *whether the person is incapable of understanding substantially the nature and effect of the particular transaction*
- In the context of a trust, the settlor has to be capable of understanding the nature and effect of the creation of the trust. This includes *understanding the extent of the property being disposed of, who will be benefitting from the holding of that property.*

(ii) ID the circumstances where each of these main types of legal incapacity arises

Minors: Testamentary Trusts

- A minor cannot make a valid will and therefore cannot create a testamentary trust
- BC s. 36 of *Wills, E & S Act* that someone 16 years of age and mentally capable may make a will and s. 38 provides that a member of the Canadian forces may make a gift of property by will, regardless of age.

Minors: Inter Vivos Trusts

- Contracts for “necessaries” of life for the minor or long term contracts concerning land are

binding unless repudiated by the minor within a reasonable time of having reached the age of majority.

(iii) Describe the potential limitations on the scope of legal capacity of minors

- Ability for a minor to make a will is limited
- Entering into a binding contract is limited for a minor – normally voidable by the minor unless they have been confirmed after reaching the age of majority or are not repudiated within a reasonable time of reaching the age of majority
- Many jurisdictions have statutory provisions that restrict the capacity of minors to dispose of property - particularly so of land, but may also apply to personal property
- Age of majority varies across Canada (19/18)

Knowledge Objectives: Other Capacity Issues

(i) ID two other situations where legal capacity may be an issue

- Matters that one should be cautious about in terms of a lack of capacity or limited capacity (1) involves a mistaken assumption concerning the legal recognition as a 'person' and; (2) the other is recognizing constraints on a bankrupt person in dealing with property
- **NOT RECOGNIZED AS A PERSON:** unincorporated association is not a legally recognized person, nor is a partnership or trust. None of these entities can own property nor enter into a trust/contract
- **BANKRUPTS:** where a person is bankrupt, his property is held in trust in bankruptcy to be dealt with according to the terms of the *Bankruptcy and Insolvency Act*.

CHAPTER 4: THE THREE CERTAINTIES

Knowledge Objectives: Introduction

(i) List the Three Certainties and Discuss the Rules Relating to Them

- Where the settlor has legal capacity to create a trust, the next question is whether the three certainties are satisfied. The three certainties apply to both express trusts for persons and express trusts for purposes.
- In trusts for persons, the requirement of certainty of objects is a requirement of certainty of beneficiaries.

1. The Certainty of Intention:

- The intention of the settlor to create a trust, either to transfer legal or equitable title to property to another person to hold for the benefit of persons or purposes OR for the intention by a person holding title to property that he holds that interest in property for the benefit of another.
- Intention can be express **either** orally or in writing, it may be *inferred* from words or *inferred* from the conduct of the parties
- No formal requirements for certainty of intention except in *testamentary trusts* and transactions to which a statute of frauds applies.
- No specific words are required to express an intention to create a trust. The use of

phrases such as “in trust” or “as trustee for” are likely to establish an intention to create a trust.

- Precatory expression are usually not sufficient to create a trust “ my hope, my wish, my expectation, etc” unless sufficient intention is found to create the trust
- *Re Walker*: one cannot make a gift of the whole interest in the property and then attempt to put a restraint on the alienation of the property, “remainder shall be divided”
- *Re Shamas*: always must consider intention. Not just a gift here because the intention of the settlor was to create a trust that created a legal obligation for the wife to care for the children with the capital.
- *Johnson v Farney*: “wish”: the word wish here was just a suggestions and therefore the wife was entitled to the property absolutely.

2. The Certainty of Subject Matter: [trust res]

- Two aspects to certainty of subject matter
- (1) certainty of the property that is to be held on trust and (2) certainty of the amount, or share, of the trust property that the beneficiaries of the trust are to receive.
 - Should know with reasonable certainty the property of the trust obligations and the distribution of income from the property
- (1). The certainty of subject matter will occur where there is reference to a specific piece of property subject to the trust obligation
 - the property will also be considered sufficiently certain where there is reference to a specific fund or even a fixed amount of a specific fund
 - ie. bank account: name of bank, name of account, account number etc
 - if the court can't quantify/ if, it will fail.
- (2) Certainty of the amounts of the beneficiaries are entitled to receive
 - (a) clearly setting out the amount each beneficiary is to receive;
 - (b) providing a method for calculating the amount each beneficiary is to receive; or
 - (c) giving the trustee a discretion to decide the amounts the beneficiaries are to receive
 - *Boyce*: I trust failed for lack of certainty because didn't know which houses were to go to daughter a and which one to daughter b's residuary
 - *Sprange*: trust would be impossible to execute due to lack of certainty

3. The Certainty of Objects: [trust ceste qui use]

- Certainties of objects is referred to as certainty of beneficiaries in a **trust for persons** and certainty of purposes in a trust for purposes.
- The objects of the trust must be certain because the trustees must know what it is they are to do with the trust property, court also needs to know this whether the trustees are in breach of trust
- The certainty is modified in the context of **charitable purposes**, it requires only that the trust be held for a charitable purpose – the court will provide a specific charitable purpose.
- **Fixed trust**: the test for whether there is certainty of beneficiaries is that one must be able to:
 - Determine whether any given person is a member of that class; and
 - Identify every member of the class
- **Discretionary trust**: the test for a discretionary trust only has to meet the first of the two parts of the fixed trust. “individual ascertain ability test”
 - the trustee needs to make a reasonable effort to identify the beneficiaries that fit within the class and to assess, in accordance with the discretion given, who

among those beneficiaries should receive distributions from the trust – act in good faith.

- **Conceptual vs. Evidentiary Uncertainty:**
 - Conceptual certainty: means that the class is defined in a way that makes it clear enough to decide whether a person is within a class
 - Evidentiary uncertainty: is what the courts deal with

Knowledge Objectives: How a Trust is Constituted

(i) Describe three ways a trust can be constituted

- The settlor can transfer the intended trust property to another person to hold as trustee;
- The settlor can declare herself to be a trustee with respect to property she owns
- A third but less common way is to have a third party transfer property to the trustee that is intended to be the subject matter of the trust
-

(ii) Describe how interests in property can be transferred to a trustee

(iii) Cite case authority concerning how a trust can be effectively constituted by the transfer of property to a trustee or by a settlor declaring herself or himself to be a trustee

CHAPTER 5: CONSTITUTION OF EXPRESS TRUSTS

Knowledge Objectives: Requirement that a Trust be Constituted

(i) What is required to constitute a trust

- A trust is constituted or perfect when the trustee holds the interest in property (legal or equitable) that is to be held in trust.
- A trust would not come into existence until the title is transferred to the trustee

(ii) Identify and explain two reasons as to why a trust must be constituted

- (1) Trustees Can't Carry out Obligations with Respect to Property the Trustee Does Not have Control Over
 - a trust imposes an obligation to deal with trust property with terms of the trust – a trustee can not deal with the trust property according to the terms of the trust unless the trustee has title to the property.
- (2) Equity will Not Perfect and Imperfect Gift
 - courts will not complete an imperfect gift
 - gift has three requirements (1) that the donor express an intention to make the gift (2) the donor delivers the property; and (3) the donee accepts the gift
 - delivery may serve to confirm the seriousness of the donor's expressed intention – not every promise leads to a legal obligation to do what one promised
 - as long as the donee has not acted in reasonable reliance on the promise, it may have seemed sensible to courts not to enforce a promised gift.

Knowledge Objectives: How a Trust is Constituted

(i) Three ways a trust can be constituted

- (i) the settlor can transfer the intended trust property to another person to hold as trustee;
 - *S hands T a diamond to hold for B until B reaches 19*
- (ii) the settlor can declare herself to be a trustee with respect to property she owns
 - *S will give the diamond to B but will hold it till B turns 19*
- (iii) less common – is to have a third party transfer property to the trustee that is intended to be the subject of the trust
 - *S might contract to provide services to F but asks F to make payment for the services by transferring to T. T has been told to hold the money on behalf of S's children*

(ii) Describe how interests in property (legal or equitable) can be transferred to a trustee

- A. Legal Interests
 - *Land*: the system for transferring legal title to land usually takes the form of a deed
 - *Chattels*: transfer of title therefore normally involves the transfer of possession. Sometimes symbolic delivery may suffice – keys to a safe, also may be done in documentary form by using a bill of lading issued by a carrier of goods
 - *Choses in Action*: transferred by assignment. Assignment through s. 36 of law and equity act or by way of an equitable assignment. The assignment must be in writing and signed by assignor – equitable assignment does not require any particular form, it is enough that the person does enough to indicate the assignment.
 - *Negotiable Instruments*: transferred by negotiation, the endorsement of the negotiable instrument in favor of another person
 - *Securities*: securities transfer are legal, mandated and vary.
- B. Equitable Interests
 - A person who has an equitable interest in property can constitute the trust of that equitable interest by:
 - (i) an assignment of the equitable interest to a trustee on trust for the proposed donee;
 - *assigning T's equitable interest (the remainder interest) to B and instructing B to hold for M and P (her children)*
 - (ii) a declaration by that person that he or she is a trustee of the equitable interest for the proposed donee;
 - *declaring herself to be a trustee of her equitable interest for M and P*
 - (iii) an instruction to existing trustees to hold the equitable interest in favour of the new intended beneficiary
 - *instructing T2 (the trustee of the 200,000) to hold her equitable remainder interest henceforth on trust for M and P*

(iii) Cite case authority concerning how a trust can be effectively constituted by a transfer of property to a trustee or by a settlor declaring herself or himself to be a trustee

- **Transfer of Property to Another [Equitable]**
- *Milroy v Lord*: shares were never properly transferred to Lord as trustee and therefore the trust was not constituted – the settlor must do everything he can to effect the transfer – the court will not give effect to the intention by substituting one mode for another mode intended
 - The intended mode was to make Lord a trustee of the shares, therefore it was to transfer the property to Lord and the court will not substitute another- it was not Medley's intention to declare himself the trustee
 - Lord was given a power of attorney by the shares were never transferred to him to act as trustee.
 - Shares were never legally vested in Lord – therefore agent, not trustee
- *Re Rose*: where the settlor does everything he could have done to transfer the shares, a trust will be found. He and Mrs Rose had signed the certificates and the fact that the registration itself

could not be done without approval was a matter out of control of Mr. Rose. Here everything was done to transfer **equitable interest** the transfer of legal interest was out of his control

- **Declaration of Self as a Trustee [Equitable]**
- Here, not transfer of property is necessary. The element of transfer or delivery is missing – in this case, courts have said that where it is argued that there was a declaration of trust, clear evidence of that intention is required.
- *Paul v Constance*: no technical words are necessary to declare oneself a trustee – it is the intent but the proof that a person has declared himself a trustee of property requires must be **clear evidence**.
- *Watt v Watt*: gift requires the delivery. The written note operated as a declaration of trust.

Knowledge Objectives: Forcing the Settlor to Constitute a Trust

(i) Enforcement of gratuitous promises to settle property or trust

- **A. Gratuitous Deeds**
- Where a deed to settle property on trust is gratuitous the court will not force the settlor to transfer the property to the trustee. Courts of equity will not grant specific performance on a gratuitous deed. Will not allow the beneficiaries to specifically enforce the settlor's promise in the deed.
- *Re Pyrc*: volunteers have no right whatever to obtain performance of a mere covenant which has remained as a covenant and has never performed
- *Kay's Settlement*: applied two key points of law.
 - (i) trustees had conceded that they could not get specific performance because specific performance would not be granted to enforce a voluntary deed (a promise in a deed for which no consideration was given). Kay's settlement by deed was voluntary
 - (ii) directing the trustees not to take any proceedings to enforce the covenant by seeking a remedy in damages since doing so would be allowing persons (the children), who were not parties to the covenant therefore could not enforce the covenant themselves, to enforce the covenant by indirect means.
- **A1 Seeking a Remedy of Damages**
- Where a deed was gratuitous, the courts of E would not grant the trustee specific performance (the trustee was the one who could enforce the deed), so the remedy would be damages.
- Where the beneficiary is the direct covenantor in the deed, he may sue to enforce the deed but where the deed is gratuitous the beneficiary cannot get specific performance, only damages. The damages would be compensation of the beneficiary for not receiving the interest but the compensation would not result in the constitution of a trust
- *Cannon*: where the deed has no consideration, you cannot sue for specific performance but as a direct covenantor [specifically named as a person to whom the promise was made] in the deed, can claim damages.
- **AII. Recharacterization of the Subject Matter of the Trust**

(ii) Enforcement of a promise to settle property on trust where consideration was given in exchange for the promise

- **B. Transfer for Value (Consideration)**
 - Where the beneficiary provided consideration for the settlor's promise. If so, the B. would be a party to a contract and would be able to enforce the settlor's promise. B. would be entitled to damages and specific performance might be available if can show that damages were an inadequate remedy.

- What if the intended trustee provided consideration for the settlor's promised delivery of property to the trustee? Same reasons as above. The difficulty would be establishing what damages would the trustee get if they were not to receive beneficial interest.
- (iii) The enforcement of promises to settle future property on trust

- **C. Promise to Convey Future Property**

- Occasionally you may promise to settle property that one does not have. "future property".
- Future property: a right that does not yet exist but may come into existence.
- If consideration is given, then the promise is enforceable because its contractually binding.
- *Ellenborough*: since she did not own the property or have any interest in the property at the time of execution of the deed, there was nothing for her to grant or assigned by the deed. If the promised future assignment is not for value, a court of equity will not enforce it – it will not assist a volunteer.

CHAPTER 6: FORMAL REQUIREMENTS FOR SOME EXPRESS TRUSTS

- The fourth requirement of an express trust is that in *some circumstances*, certain formalities are to be observed in order to create the trust.

Knowledge Objectives: The Statute of Frauds

- (i) Describe the three situations in which some written evidence may be required under statute of frauds legislation

- Requires that contracts with respect to land, or for which performance would be called for over a prolonged period (more than one year), to be proven by some note or memorandum in writing and signed by the person to be charged or by the person's agent.
- All trusts with respect to land had to proven by some writing signed by the settlor
- All grants and assignments of equitable interests in trust (whether they were trusts of interests in land or otherwise) had to be in writing

1. *Contracts with Respect to Land*

- S. 4 of the Act is a writing requirement. The agreement must be in writing and that it is signed by the person to be charged or by an agent of the person to be charged
- It can be a memorandum as well as long as it or the note contains the terms of the agreement or refers to a document that contains the terms. The written document can also be signed by a person lawfully authorized by the party to be charged.

2. *Creation of Trusts with Respect to Land*

- S. 7 provides all declaration or creations of trusts or confidence of any land, tenements or hereditament shall be written and signed by the party who is enabled to declare the trust.
- This covers not only the creation of trusts by transfer of land but also declaration of trust with respect to land.
- Requirement: trust obligation be manifested and proved by some writing. It CANNOT be signed by the agent of the settlor.
- Void if its not in writing and signed.

3. *Assignment of Equitable Interest in Trusts*

- S. 9 provides all grants and assignments of an trust shall be in writing, signed by the party granting, or shall be void.
- Assumed that “grants and assignments of any trust of confidence” means equitable interests
- Involves land and personal property
- If not signed then its void.
- Enforcement: must be in writing. The grant or assignment also cannot be signed by an agent for the person having the equitable interest.

(ii) ID and describe the problems that were created by statute of frauds

- Problem with statute was that it often led to the promises acting on promises caught by the statute but that were not evidence in the way required by the statute. If the promisee acted on the promise it might also benefit the promisor.
- *There was often a reliance on the promise and in many cases there was also an unjust enrichment of the promisor.*
- **Response:** The court mitigated the negative effects of the *Statute of Frauds* through the “doctrine of part performance” and the “doctrine of fraud”
- **Doctrine of Part Performance:** develop a doctrine of part performance as an alternative mean of proving the K. Some act be that done that could only be explained on the basis of an alleged oral contract. Part performance may suggest that there has been reliance on the promise that is not supported by signed written evidence.
- **Doctrine of Fraud:** principle developed to avoid the statute was the doctrine of fraud. All that is required for there to be “fraud” is that the person retains the property knowing it was conveyed to him as trustee. Fraudulent intent is not required.

(iii) Describe the changes made to the typical requirements of statute of frauds legislation by s. 59 of the BC Law and Equity Act

- Statute of Frauds was repealed and replaced with s. 59 of the *Law and Equity Act*.
- 1. This allows for contracts respecting land – allowing enforcement in ways other than a writing signed by the person to be charged.
- 2. Does not apply to creation, assignment or renunciation of an interest under a trust
- 3. No requirement of writing for the grant or assignment of an interest in a trust.

Knowledge Objective: Testamentary Trusts

(i) Explain the terms secret trust (or “fully secret trust”) and semi-secret (or “half-secret”) trust

- **Fully Secret Trust:** Arises where property is bequeathed to a person in a will with no indication in the will that the person is to hold that property in trust. The testator, before her death, has communicated to that person an intention that the property is to be held on trust as described to the person and the person has accepted the trust or acquiesced by not indicating refusal.
- The trust is full secret because there is no indication on the face of the will that there is any trust obligation.
- **Semi-Secret Trust:** is bequeathed to a person in a will and the will indicates that the person is to receive the property in trust. The objects of the trust are, however, not set out in the will. Before the testator executes the will, he gives instructions to the person who will receive the property under the will as to the nature of the trusts on which the property is to be held.
- **Difference:** semi-secret testator indicates in the will that the property is held subject to a trust

obligation vs. secret: where there is no indication of trust obligation or no will but trust terms have been communicated and accepted.

- Timing is also different.

(ii) Set out the requirements for a valid fully secret trust and for a valid semi-secret trust

- Conditions or requirements for both secret and semi-secret trusts:
 - i. Communication by the donor of the trust and its terms to the donee
 - ii. Acceptance of the trust obligation by the donee
 - iii. Communication must be timely.
- **Secret:** communication of the trust obligation can be made at any time before the death of the testator
- **Essentials of a Secret Trust:**
 - (i) an intention of the testator to subject the primary donee to an obligation to a secondary donee;
 - (ii) communication of that intention to the primary donee; and
 - (iii) acceptance of the obligation by the primary donee either expressly or by acquiescence
- communication may come before or after making the will
- clear evidence of intention, communication and acceptance is required
- **Semi-secret:** the communication of the trust obligation must be before or at the time of the making of the will
- Both must also meet the three certainties and not be contrary to public policy.
- Indicates on its face that there is a trust obligation but does not set out the terms of that trust obligation
- Only comes into effect on the death of the testator and the gift of property subject to the trust obligation, therefore a testamentary disposition.
- Communication for a semi-secret trust must be before, or at the time of, the making of the will

(iii) Case Authorities for Secret and Semi-Secret Trusts

Chapter 7: PUBLIC POLICY

Introduction

- Last requirement for the creation of an express trust is that the trust is unenforceable if it is contrary to public policy
- Public policy may be expressed in statutory form, trusts created for purposes prohibited under such states are unenforceable
- Courts may find a purpose to be contrary to public policy, often it is expressed as imposing an unacceptable cost or consequence on other persons. *Example: involving discrimination on the basis of sex or race.*

Knowledge Objectives: Trusts for Illegal Purposes

- (i) Be able to provide an example of a trust likely to be found unenforceable on the basis that it is for an illegal purpose
 - Trusts that are set up for fraudulent purposes are invalid.
 - *Example: a trust that puts assets in the hands of trustees, usually for the benefit of family members, to make the assets unavailable to creditors.*
 - Trusts for non-charitable purposes, other than the narrow set of non-charitable purpose trusts that are considered valid, shall be declared to be made for “illegal purposes”

Knowledge Objectives: Consequences of Illegality

- (i) Discuss the potential consequences of finding that the trust is for an illegal purpose
 - If it fails due to illegality, the normal result is that the trust is unenforceable.

Symes v Hughes

The settlor was allowed to get the trust property back where the illegal purpose of the trust was not carried out. The mere intention to effect an illegal object when the assignment was executed does not deprive the assignor of this right to recover the property from the assignee, where no consideration was given for it.

Re Great Berlin Steamboat Company

Where the illegal purpose was said to have been carried out and the settlor was not allowed to get the property back even though others may not have been harmed by the illegal purpose. The difference was that in this case the fraud was achieved and so the property could not result.

- In Canada the view that the court should refuse to order a resulting trust that allows a settlor to have property returned from a prior transfer that was intended to perpetrate a fraud regardless of whether the intended fraud was achieved. This was adopted in *Scheuerman v Scheuerman*
- SCC has not taken up this issue and so there is a lack of clear direction on this topic.
- It is also possible that the consequence of an illegal purpose is that the property involved is forfeit. Property may be confiscated where it is the proceeds of crime. *Example: funds settled on trust may also be forfeit where the trust is being used for money laundering or to finance terrorism.*

Proceeds of Crime Legislation

- CC 462.37 allows for proceeds of crime to be seized. Applies to any designated crime, which is defined to include any indictable offence. Also applies to acts outside of Canada

Proceeds of Crime and Terrorist Financing

- Sets out record keeping and client information requirements for financial service providers and others that engage in business, professions or activities that are susceptible to being used for money laundering or the financing of terrorist activities.
- S. 7 reporting of suspicious financial transactions and cross-border movements of currency and monetary instruments

Knowledge Objective: Trusts Imposing Conditions That Are Contrary to Public Policy, Impossible of Performance or Uncertain

Condition Precedent: condition must be satisfied before the interest can take effect.

Conditions Subsequent (Defeasible Interests): the interest will no longer be effective if the condition occurs. *In technical language, when a condition subsequent is fulfilled it divests an interest that has already*

vested in possession. Any interest subject to a condition subsequent is also known as a defeasible interest.

Condition Subsequent v Words of Limitation: words such as “while”, “during”, “so long as” and “until” tend to be taken to be interpreted as indicating a **determinable interest (words of limitation)**. Words such as “on condition that”, “but if”, “provided that” or “if it happens that” are normally treated as indicating a condition subsequent.

- (i) Provide an outline of the possible outcomes where a condition in a trust is contrary to public policy

Effect of Illegal Purpose in a Determinable Interest

- If words of limitation indicate an illegal purpose then the interest that is being granted is not a valid interest and the gift fails

Condition Precedent

- If there is a gift of real property subject to a condition precedent that is contrary to public policy, the gift is void, presumably because the settlor did not intend to make the gift if the condition could not be fulfilled.
- Where however the property is personal property a condition precedent contrary to public policy renders the gift void only if the condition is *malum in se* (bad in and of itself). If the condition is merely *malum prohibitum* (forbidden by law), the gift operates free of the condition.

Condition Subsequent

- A condition subsequent contrary to public policy results in the condition being struck out and the gift operates without the condition. This is the case for both real and personal property.

Conditions Impossible of Performance

- A gift of personal property subject to a condition precedent that could not possibly be fulfilled at the date the gift was made will be free of the condition
- If the settlor clearly intended the condition should operate and it became impossible of being fulfilled at a date after the trust was created for reasons beyond the control of the settlor then the gift fails.

Uncertain Conditions

- Conditions that are uncertain are void. If a condition precedent is void for uncertainty the gift that would result from the satisfaction of the condition fails. Presumably the idea is that the settlor would not have made the gift without the condition that has been found to be uncertain.
- If instead the condition is a condition subsequent and it fails for uncertainty, the gift is an absolute gift not subject to that condition
- Three questions need to be asked (1) is the condition impossible to perform? (2) is the condition a condition precedent or a condition subsequent and (3) is the condition uncertain

Conditions Contrary to Public Policy

- Courts have, however, generally been slow to add to or reduce the scope of matters that are contrary to public policy, often leaving the decision on such matters to the legislature.

- (ii) Identify situations in which courts have historically found a condition in a trust contrary to public policy

Restraint of Marriage

- Conditions have been held to be void if their purpose is to impose lifetime celibacy. In the past these conditions took the form of a restraint of marriage.
- Words might have been interpreted as a condition subsequent indicating that marriage would bring an end to the gift.

Interference with Marital Relationships

- A condition which encourages the separation of married couples or discourages separated couples from getting back together

Interference with Discharge of Parental Duties

- Example: a gift to a minor subject to forfeiture of the gift if the child resides with his or her parents is contrary to public policy.

Discriminatory Conditions

- Example: *Re Drummond* contrary to public policy where there was a condition prohibiting the sale of the property to Jewish persons.

Restraints on Alienation or Interference with Enjoyment of Property

- Example: restriction on the sale of property to a person outside of the family is likely to be considered an invalid restraint on alienation

Adherence to Particular Religion

- Conditions that require a person to adhere to a particular religion have not been considered contrary to public policy but have often been struck down on the basis that they were uncertain.

Knowledge Objective: Trusts that Defraud Creditors

Knowledge Objective: Rules Against Perpetuities

Introduction

- Rule against perpetuities has been said to promote alienability of property.
- Also considered an economically efficient rule since it prevents property from being tied up in a particular use indefinitely, thereby allowing the property to be put to different uses.
-

(i) *The basic common law rule against remoteness of vesting*

- The main rule is often referred to as the remoteness of vesting rule, but it is sometimes also referred to as the “modern rule”
- “*an interest is valid if it must vest, if it is going to vest at all, within a period calculated by taking the lives in being, at the date the instrument takes effect, plus 21 years*”
- puts a constraint on the period of time by limiting the time to lives in being plus twenty-one years
- the modern rule applies to contingent interests. It does not apply to vested interests.
- Contingent interests are interests that have yet to vest because something that may or may not happen has to happen before the interest arises
- A contingent interest must vest within the perpetuity period. If there is an interest that may or may not arise depending on whether a particular event occurs, the event must occur within the perpetuity period.
- Where there is a class of beneficiaries, the size of their relative interests must be known within the perpetuity period, if it is possible that the trustee could exercise the discretion outside the perpetuity period then the gift is void.
- If the interest of any member of a class could vest outside the perpetuity period then the whole gift will be void
- An interest does not have to vest in the perpetuity period. It simply has to be clear that it will or will not vest within the perpetuity period
- Lives in being: one looks to the individuals that have *some connection* to the grant being made.

Steps to Applying the Modern Rule

1. Is the interest contingent?
 - a. If any of those gifts are contingent on something, there is a potential application of the remoteness of vesting rule

2. What are the relevant lives in being referred to in the instrument?
 - a. This may be explicitly or implicitly
3. Is there a possibility that an interest will vest outside the perpetuity period?

(ii) The rule against perpetual duration

- Where there are no lives against which to measure the perpetuity period, the period is 21 years. This is commonly the case for the limited types of valid non-charitable purpose trusts.

(iii) The rule in *Whitby v Mitchell*

- Invalidates a gift that involves a life interest to an unborn person followed by a remainder to the issue of the unborn person with the life interest.
 - Issue with this rule is that gifts that would not be invalid under the remoteness of vesting rule might nonetheless be invalid under the *Whitby v Mitchell* rule.

(iv) The nature of legislation on accumulations

- The remoteness of vesting rule led to many problems and there have been many law reform reports in common law jurisdictions around the world examining the rule and suggestions reforms
- “wait and see” legislation
- S. 14 provision: age at which persons cannot have children
 - Presumption that a female cannot have a child after she has reached the age of 55 and for a male, it allows evidence to be advanced to show that he is no longer able to have children.
- S. 8: wait and see
 - A mere possibility that a contingent interest will vest beyond the perpetuity will not make a gift void.
- S. 9: the contingent gift remains valid until actual events establish that it cannot take effect within the perpetuity period. If it does not vest in the perpetuity period, or if it becomes clear that it cannot vest in the perpetuity period, one moves on to consider other saving provision
- S.11 : Age reduction
 - That if a gift is to be made to a person reaching an age greater than 21 years old and if that would render the gift void then the court can reduce the age at which the gift is to take effect to age 21.
- S.12: Class Splitting
 - If a gift vests in some members of a class within the perpetuity period but does not vest in other members of the class within the perpetuity period, then those whose interest vest outside the perpetuity period are cut off
- S. 13: Cy Pres
 - When all other saving provisions have failed to save the gift from being void under the common law rule, the court is given the power to vary the gift to make it fit within the perpetuity rule in a way that fits the general intention of the donor.
- S. 7 allows for an express 80 year period to be used. If it is clear that the property under the trust is required to vest no later than 80 years from the date the trust is created then it does not violate the rule against perpetuities, even if it would otherwise violate the rule.
- When there is a grant of contingent interest the law that governs the grant is the law of the jurisdiction in which the property is located.
- With chattels the applicable law is generally the law of the jurisdiction where the chattel is located.

- With a chose in action such as a debt it is normally the jurisdiction of the debtor.

Applying the Tests

- First step is to check the jurisdiction in which property subject to the trust is located, then check the position on perpetuities in that jurisdiction. If the property is in a location that has the unreformed common law rule, one should apply the checklist:
 - i. Is the interest contingent?
 - ii. What are the relevant lives in being referred to in the instrument?
 - iii. Is there a possibility that the interest will vest outside the perpetuity period?
 - iv. Even if the interest complies with the modern rule, does it violate the rule in *Whitby v Mitchell*?
- If the property is located in a “wait and see” legislation reform jurisdiction, one must apply that same checklist substituting (iv) for
 - iv. How do the legislative modification affect the application of the common law rule?

Charitable Purpose Trusts

- An exception to the application of rules against perpetuities to charitable purpose trusts. These trusts can last for indefinitely long periods of time.
- The problem with property becoming inalienable and getting tied up in particular use is dealt with by an application of *cy pres*'s principle – where the courts can redirect the use of the property to some other use that is reasonably close to the settlor's original intended purpose.

Accumulations

- The *Accumulations Act* prohibits the accumulation of income for periods of longer than the life of the grantor or twenty-one years from a series of starting times set out in the Act.
- Ontario Legislation:
 - Much shorter permitted period for accumulation of income than the common law remoteness of vesting perpetuity period. It sets out six periods
 - (1) relevant to the *inter vivos* trust – the life of the grantor
 - (2) 21 year from the date of making the *inter vivos* disposition
 - (3) duration of the minorities of persons living or conceived but not born at the date of making an *inter vivos* disposition.
 - (4) 21 years from the death of the grantor, settlor or testator
 - (5) duration of the minorities of any person living or conceived but not born at the death of the grantor, settlor or testator
 - (6) duration of the minorities of persons who, under the instrument directing the accumulation, would, if of full age, be entitled to the income directed to be accumulated.

British Columbia's Perpetuity Act Modifications

- The perpetuity Act in BC has repealed the application of the English *Accumulations Act* and replaced the common law rule
- S. 25: if property is disposed of in such a manner that all or part of the income of it may be accumulated, the power or direction to accumulate that income is valid if the disposition of the accumulated income is or may be valid, but not otherwise” – the disposition of the accumulated income would therefore be valid if it complied with the common law remoteness of vesting rule as modified in the *Perpetuity act*.

Knowledge Objective: Restraints on Alienation and Spendthrift, or Protective, Trusts

- (i) Be able to describe protective and spendthrift trusts noting the difference between the American spendthrift trust and the Canadian protective trust.

Restraints on Alienation Generally

- Settlers may impose restraints on the *mode* of alienation of property, or a restraint on the *class* of persons to whom an alienation of property can be made, or a restraint on alienation for a particular period of *time*.
- Restraints on alienation are permitted but only to a point

Protective Trusts and Spendthrift Trusts

- Protective and spendthrift trusts are two common examples of trusts³ that impose a degree of restraint on alienation.
- Protective and spendthrift trusts try to provide funds on an on-going basis for the beneficiary who is inclined to spend every nickel he or she has in a relatively short period of time⁴
 - Restraints imposed on the beneficial interest to achieve this may be considered invalid restraints on alienation
 - *Example: a life interest that may be cut short on the occurrence of specific events such as bankruptcy, insolvency, etc.*

Spendthrift Trust vs Protective Trust

- Spendthrift trust and protective trusts: try to address either (a) the risk that a spendthrift beneficiary might assign her or his interest or at least prevent the fund intended for a spendthrift beneficiary ending up in the hands of creditors on a bankruptcy or as a result of a charge being put on the spendthrift beneficiary's property
- **American Spendthrift Trust:** the trustee is prohibited from distributing an amount to any person other than the particular beneficiary. This restriction effectively prevents the beneficiary from alienating his or her property and may be considered an invalid restraint on alienation contrary to public policy
- **Protective Trust:** Canadian version of spendthrift trust. It is given statutory meaning.

CHAPTER 8: OVERRIDING THE TRUST INSTRUMENT

Introduction

- The terms of the trust instrument can be overridden or varied in four ways:
 1. The trust can be terminated before its full implementation under the terms of the trust instrument
 2. The trust can be terminated before its full implementation under the rule of *Saunders v Vautier*
 3. The trust can be varied by application to a court for the variation of the trust pursuant to a statutory power given to the court
 4. A charitable purpose trust can be varied by a court ordered administrative or *cy prés* scheme

Termination Under the Terms of the Trust Instrument

- Trust may be terminated under the terms of the trust instrument
 - It may be because it has run its course
- May also be terminated in BC by adopting the termination date of eighty years from the date of its creation pursuant to s. 7 of the *Perpetuity Act*.
- Terms of the trust can be overridden before its full implementation through a power of revocation. This is where the settlor revokes the trust and the trust property is returned to the settlor
 - If the settlor wants to be able to revoke the trust, the right to do so must be expressly reserved in the trust instrument.
 - It is a rare power to reserve a right of revocation for tax reasons. The right of revocation results in the income of the property being taxed in the hands of the settlor.

Knowledge Objectives: The Rule in Saunders v Vautier

(i) Be able to articulate the rule in *Saunders v Vautier*

- “one or more beneficiaries, all of full legal capacity, and who is, or are collectively, entitled to all the beneficial interest in the trust may apply to have the trust terminated and the assets transferred even though the trust instrument calls for final payment to be delayed”

Saunders v Vautier
Vautier’s uncle left him with East India stock in trust. The dividends were to be retained and accumulated until V reached 25 then they were to go to V. V wanted it earlier and the court allowed it, finding there was no contingent interest. The broader statement of the rule was accepted by the SCC which allows for more than one beneficiary where all the beneficiaries agree to the termination of the trust.
The rule serves a useful purpose where there are relatively few beneficiaries and the trust is not longer serving its interest because the fees for the trustees are outstripping the returns. Sometimes changes in tax law may make a once sensibly tax-planned trust no longer sensible.
In theory, the rule can operate without an application to court but in practice an application is made. Either the beneficiaries and trustees could apply to the court for the terminating of the trust on the basis of the rule.

Situations in which the Rule may apply

- the rule has three key elements:
 - i. the beneficiaries must have **full legal capacity**. Adult and of sound mind in the sense of having an ability to appreciate the nature and effect of winding up the trust and the terms on which the trust is being wound up.
 - and is entitled to the beneficial interest in the property
 - rule can also apply where there are several beneficiaries of sound mind with concurrent interests
 - successive interests: may combine to require the trust to be terminated
 - the rule can also apply where distribution of all or some part of the trust property is postponed to a future date.
 - My apply where the trustees have been given discretion as to distribution of income or capital, where there is a class of beneficiaries and the trustee has been given discretion.
 - ii. Together, the persons have to have the full beneficial interest in the trust property. If persons have **contingent interests** they too must agree to the winding of the trust.
 - iii. All the beneficiaries agree to the winding up of the trust

*Avoiding the Application of *Saunders v Vautier**

- The settlor may want to prevent the beneficiaries from winding up the trust. Two elements allow for the application of the rule to be avoided
 1. One way to avoid the rule is to have a minor, or as yet unborn beneficiary, who do not have legal capacity to consent to winding up the trust under the rule
 2. One can also try and have beneficiaries who will not consent to the termination of the trust or whose consent cannot be obtained because they are difficult to ascertain
- The application of the rule might be avoided by providing for a **contingent interest**. *One may select a contingent beneficiary who would not agree to the termination of the trust and who would not accept any payment from other beneficiaries inducing that contingent beneficiary to agree to the termination of the trust.*
- to better avoid the application of the rule one could create a contingent interest in favour of a **minor or unborn person**. The rule requires beneficiaries to be adult beneficiaries and thus this would prevent the rule from applying at least until the contingent beneficiary reaches adulthood.
- Another approach is to give the trustees a discretion to distribute among a class of persons that either includes persons who would be difficult to ascertain, therefore making it difficult to get all the persons with beneficial interests to agree on winding up the trusts

Knowledge Objectives: Variation of Trusts

- (i) Explain what variation of trust legislation (such as BC's Trust and Settlement Variation Act) does and what the probable purpose was for the enactment of such legislation.

Nature and the Purpose of the Legislation

- Even where the rule does not apply the trust terms may still be varied under provincial legislation
- The legislation allows the courts to consent to a variation on behalf of beneficiaries who are not adults, otherwise do not have legal capacity, are unborn, or who have contingent interests and are unascertainable.
- Trusts legislation has been said to have been motivated by income tax legislation
- *Trusts and Settlements Variation Act*
 - S.1 SC may approve a proposed revocation or variation of a trust if it thinks fit on behalf of particular types of persons described in paragraphs (a) to (d) of the section
 - S.2: court must not give its consent on behalf of persons described in paragraphs (a) through (c) of s. 1 unless it "appears to benefit that persons"
 - S. 3: if a court is being asked to give consent on behalf of an unborn person, a minor, or person otherwise lacking capacity, notice in writing of the application must be given to the Guardian or Trustee

Persons on whose behalf the court can give Consent

- *Minors or Persons Lacking Legal Capacity:* give approval on behalf of persons who are minors or otherwise lack legal capacity and who have an interest in a trust whether **vested or contingent**
- *Persons of Specific Description of Specific Class:* the court may consent for a person who is of a specific description or class, who may become entitled at a future date or on the happening of a future event
- *Unborn Persons:* court may give consent
- *Discretion that can only be Exercised on the Failure or Determination of an Existing Interest:* paragraph d allows the court to give consent on behalf of a person who may obtain an interest in the trust by reason of the exercise of a discretionary power given to someone where the discretionary power can only be exercised on the failure or determination of an existing interest that has yet to fail or be determined.
 - The court may not consent for a, b or c unless it appears to be for the benefit of that person. The courts will generally ask whether a "rational person presented with the variation providing such a benefit would consent to it"?

CHAPTER 9: NON-CHARITABLE PURPOSE TRUSTS

Introduction

Purpose Trusts: not for specific individuals but for particular purposes. The trusts can be for charitable purposes and non-charitable purposes. Require the same considerations for creation of express trusts, except instead of certainty of objects, it is certainty of purposes.

Charitable Purpose: trust for a purpose that falls within the legally accepted heads of charity: *relief of poverty, advancement of religion, advancement of education or other purposes beneficial to the community*. Certainty of objects requires that there be "an exclusive general charitable intent."

Non-Charitable Purpose: does not fall within the accepted heads but can include other things. The purpose must be sufficiently certain that "one can assess whether any given act of the trustee is consistent with the purpose."

Knowledge Objectives: The General Rule Against Validity of Non-Charitable Purpose Trusts

- (i) Articulate various reasons advanced for the general rule of the non-validity of non-charitable purpose trusts and the arguments as to what the primary reason for the rule is:
1. **Beneficiary Principle:** there needs to be someone in whose favour the court can decree performance (*Morice v Bishop Durham*). Without a beneficiary, there is no one to enforce the trust obligation and no one in whose favour enforcement can be ordered and thus no trust obligation. **This is the primary reason for the rule.**
 2. **Conceptual Uncertainty:** too uncertain to be enforced. This is not a general rule since there is a possibility for purpose trusts to be reasonably certain.
 3. **Perpetual Duration:** and thus violate the rule against perpetuities. However, it is possible to construct a trust for a purpose that complies with the rule against perpetuities.
 4. **Excessive Delegation of Testamentary Power:** The testator could simply transfer funds to a trustee for a purpose leaving the trustee a very broad discretion in carrying out the purpose, but testamentary trusts provide discretion and thus this cannot be a major reason for the non-validity.
- (ii) (a) identify the exceptions to the rule
- *Morice v Bishop of Durham*: the general rule that non-charitable purpose trusts are not valid. Exceptions were made to the general rule (i) erection of a monument at a gravesite; (ii) maintenance of a gravesite; and (iii) care of specific animals.
- (iii) (b) explain why those exceptions may have been made
- exceptions have been made where the court has had an indirect means of enforcing the trust.
 - Criticisms have been made about this though, as it is on the basis of “negative enforcement.” The person who is entitled to the remainder will have no incentive to see that the trustee actually carries out the trust for the particular purpose.
- (iv) (c) Discuss whether the implication of those exceptions is that there is no general rule.

Skill Objective: Purpose Trusts with Individual Beneficiaries

- courts have been able to construe the language to enforce the non-charitable purpose trusts as a **trusts for persons**.

<i>Re Denley's Trusts</i>
Involved a trust expressed as a trust for purposes that the court construed as a trust for persons. The trust was made for the benefits of the employees.
<i>Where the trust, though expressed as a purpose, is directly or indirectly for the benefit of an individual or individuals, it seems to me that it is in general outside the mischief of the beneficiary principle.</i>
Stands for the proposition that a purpose trust is legally valid as long as there is some person who can be given standing to enforce the trust.

<i>Keewatin Tribal Council Inc v City of Thompson</i>
Executed a trust indenture for property making itself the trustee of the property in the city of Thompson for various first Nations bands. However, FN bands are not legal persons.
The court held the trust to be a valid non-charitable purpose trust on the basis that the indirect beneficiaries were the individual members of the bands. <i>Any number of individuals might be given standing to enforce the trust.</i>
<i>Re Denley</i> ratio is upheld here.

Peace Hills Trust Co v Canada Deposit Insurance Corp

The courts held here that it was a purpose trust, that the funds were held for the purpose of purchasing the land. Thus what this case shows was that the position is developing in Canada and there is no general rule against the validity of non-charitable purpose trusts

Knowledge Objective: Statutory Reform

- (i) Be able to describe the statutory reform in “wait and see” perpetuity legislation concerning purpose trusts
- Perpetuities statutes deal with the problem of the non-enforceability of non-charitable purpose trusts by treating them as powers and limiting the power to a period of 21 years.
- S. 24 : a trust for a specific non charitable purpose that creates no enforceable equitable interest in a specific person must be construed as a power to appoint the income or capital. The trust is valid so long as and to the extent that it is exercised either by the original trustee or the successor within a period of 21 years.
- The person who would have been entitled to the property comprised in the trust, if the trust had determined at the expiration of the 21 year period, is entitled to that unexpended income or capital.
- Four different interpretations as to when s. 24 might apply:
 1. The section only applies where there is a perpetuity problem, one only construes a purpose trust to be a power where it also offends the rule against remoteness of vesting.
 2. Situation where there is a problem with the enforcement of the obligation, where there is no person who could be given standing to enforce the trust
 3. Creates no enforceable equitable obligation in a specific person. this would mean that the provision would apply to all non-charitable purpose trusts that cannot be interpreted as tradition for person trusts as long as the purposes are specific non-charitable purposes.
 4. Interpretation applies to all non-charitable purpose trusts whether there is a perpetuity problem or not and whether or not they are recognized as anomalies to the general non-validity of non-charitable purpose trusts.
- “specific no-charitable purpose”: the court must know whether any given use of the funds is consistent with the purpose or not in order to determine whether the trustee has acted in accordance with the power to expend funds for the purpose intended. The court must be able to determine whether any given use of the property is within the power or not in order to determine whether the power has been validly exercised.

Knowledge Objective: The Problem of Unincorporated Associations

- the problem of gifts to an unincorporated association is a complex one that creates these issues (i) the problem with the validity of purpose trusts ie. who will enforce them (ii) the perpetuity problem; and (iii) the certainty of purposes of a non-charitable purpose trust.
- (i) Explain the problem with gifts to unincorporated associations to be held on trust
- Unincorporated associations are not legal persons and therefore the law sees it as a gift to no one.
- (ii) Identify ways in which a gift in trust to an unincorporated association may be saved as a valid trust or gift
- A. The gift could be saved if it could be interpreted as a gift directly to the members of the association themselves as joint tenants thereby allowing the members to divide up the gift between them. This

would only work if the members could sever their shares and take the property to themselves. *It is rarely the case that a gift to an unincorporated association was intended to be divide up between the members of the association.*

- B. A gift to the association to be used for the purposes of the association can be saved if the members *can* wind up the association and distribute the property held for the purposes of the association among the members. If they choose not to wind up the association then they have apparently agreed to hold the property according to the contract amongst themselves and to have the property used for the purposes of the association. *It is not contrary to rule against remoteness of vesting since the property is already vested in the members.*
 - if the members cannot wind up the association and the association can go on indefinitely then it violates the rule of remoteness.
- C. The gift cannot be distributed by the members, the gift will nonetheless be valid if the purpose is exclusively charitable. It will not create a perpetuity problem since the perpetuity rules do not apply to property held in trust for charitable purposes.
- D. Where a gift is made for a particular purpose or purposes other than the that of the association, it cannot be treated as a gift to the members for the purpose of the association. It may be construed as a trust for persons or it is valid where the purpose is a charitable purpose.
- E. A gift may be saved under s. 24 of the BC *Perpetuities Act*
- F. Policy: strong desire to enforce gifts to satisfy the intent of the donor or, while not necessarily charitable, it is often set up to do things that might generally be considered beneficial to the community

CHAPTER 10: CHARITABLE PURPOSE TRUSTS

Knowledge Objectives: Introduction

- (i) Discuss the modifications to : (a) the beneficiary principle; (b) the requirement of certainty of objects; and (c) the perpetuity rules for charitable trusts
 - **Beneficiary Principle:** The main problem with purpose trusts is that there are no beneficiaries to enforce the obligation. This is dealt with in the context of charitable purpose trusts by having the Crown enforce the trust.
 - **Certainty of Objects:** court will provide an administrative scheme to carry out a settlor's charitable intention as long as it is clear that the settler has a charitable intention
 - **Relief from Perpetuity Rules:** charitable purpose trusts can be indefinite and restrain alienability.
 - **Qualifications of Non Application of Perpetuity Rules:**
 1. If the settlor decides to put property in trust for a charitable purpose, but on the happening of a particular event the property is to go to some person then the contingency must be resolvable one way or within the perpetuity period.
 2. If the property is held on an express trust for persons but on the happening of some condition subsequent it is to be held for charitable purposes, that condition subsequent must be determinable one way or within the perpetuity period
 3. May be restrictions on accumulations of income in a trust for charitable purposes in jurisdictions that have not repealed accumulations legislation.
- (ii) Compare and contrast the tax basis for the definition of charitable purposes and the trust law basis for the definition of charitable purposes
 - No common law recognized legal entity or concept of a charity. The definition is set out in the *Income Tax Act*
 - A corporation can be formed to carry on business for profit or to carry on an activity on a not-for-

- profit basis, referred to as “societies” in BC
- *Income Tax Act* exemption for a not-for-profit corporations – they do not pay taxes.
- Important difference between a not-for-profit organization and a “registered charity”
- In addition to not being subject to tax, a registered charity can give out receipts to persons who make donations to the registered charity and the donors can use those receipts to claim a tax credit for their donations to the registered charity. Only a registered charity can give valid receipts to donors
- **Charitable foundation:** the corporation or trust must show it will be providing its funds to organizations operated for “charitable purposes”.
- **Charitable Organization:** the corporation or trust must show it will devote all of its resources to charitable activities
- Charitable organizations are often given relief from municipal property tax

Knowledge Objectives: The Relief of Poverty

- (i) Discuss the relative concept of poverty and the notion that it is not limited to the provision of bare necessities

- What constitutes poverty may shift over time
- Relief of poverty means more than simply providing the basic amenities of life

<i>Re Brown</i>
A gift to the treasurer to provide for luxuries for persons was upheld as a charitable purpose trust
<i>Re Hart</i>
A trust to provide for outings for poor children and their parents during the summer months was a charitable purpose trust under the relief of poverty

- (ii) Discuss the modifications to the public benefit test in the context of “the relief of poverty” citing relevant authority

- Trusts involving small classes of beneficiaries who have relationships/connections to a single person have constituted a public benefit.
- Courts make exceptions for the public benefit rule for relief of poverty

<i>Jones v Executive Officers of the T Eaton Company</i>
50,000 was to be paid, on the death of the testator's wife, to the company to be used as a trust fund for “needy and deserving”. The time of litigation there were 7,000 members. The court concluded that it was exclusively charitable and fell within the head.
Court noted that exceptions had been made to the public benefit requirement for trusts for the relief of poverty. Thus the court concluded that it was a valid charitable purpose for relief of poverty despite that the persons who benefit were related to a single person as employees.

Knowledge Objectives: The Advancement of Education

- (i) Discuss the potential scope of the advancement of education as a charitable purpose citing relevant authority

- “advancement of education” based on the references in the preamble of 1601 statute and has been broadly interpreted
- education is broadly about the acquisition of knowledge and includes education outside of formal educational settings.

Societa Unita v Gravenhurst

Recreational summer camp for kids was charitable because they learned other skills (Italian language, history and customs) and proceed better citizens.

- Advancement of education includes professional and trade educations but there is a tendency to restrict it to “higher levels of professions”

Re Seafarers’ Training Institute and Williamsburg

Students, physical facilities, teachers and a curriculum to further advance those in attendance to pursue their vocation then it is charitable.

- *Re Dupree’s Trusts*: encouraging chess playing was charitable as it encourages foresight, concentration, memory and ingenuity
- Trusts for encouraging aesthetic appreciation have also been upheld under the head of advancement. *Re Shakespeare Memorial Trust*: promotes performances.
- Mere provision of information to the public is **not** considered to be charitable.

Vancouver Society of Immigration and visible Minority of Women

Mere provision of information does not contribute to the “improvement of a useful branch of human knowledge and its public dissemination”

- (ii) Identify, articulate and asses potential arguments that a trust is for the charitable purpose of advancement of education with reference to the relevant authority.

- Leading case is **Vancouver Society of Immigration and Visible Minority of Women**
- Standard for advancement education: *so long as information or training is provided in a structured manner and for a genuinely education purpose – that is, to advance the knowledge or abilities of the recipients – and not solely to promote a particular point of view or political orientation, it may properly be viewed as falling within the advancement of education”*
- It may be theoretical or practical, speculative, moral or technical and may be non traditional BUT Providing an opportunity to educate yourself is **not enough**
- An activity is for the advancement of education:
 - i. Geared at the training of the mind
 - ii. Provided in a “structured manner”
 - iii. For a genuinely educational purpose; and
 - iv. Not just for the promotion of a particular point of view
- Trust must provide a **public benefit**. There is a presumption of public benefit but it is rebuttable

Re: Pinion; Westminster Bank, Ltd v Pinion

Purpose was not to education anyone, but was to perpetuate his own name and the repute of his family. Experts claimed the paintings he had donated were worthless and would not provide a means of education.

Knowledge Objectives: The Advancement of Religion

- (i) Identify the origin of the advancement of religion head of charitable purpose and what is generally included in it
- Preamble 1601. It is generally said to be very tolerant of a wide range of religions

Thorton v Howe

The law makes no distinction between one sort of religion and another.

- **Public Benefit:** presumed to be for a public benefit, courts have been willing to assume there is a benefit from the practice of a religion.
- However, a benefit to the “public” has been questioned if only a few persons can benefit

<i>Gilmour v Coats</i>
No benefit to the public, even though the trust was for the advancement of religion, where it was only available for 20 women.
The private practice of religion or a religious rite would not provide a public benefit, but that a public practice of a religious rite could provide a public benefit.

<i>Re Hetherington</i>
Noted: Celebration of a religious rite in private would not have the necessary element of a public benefit.
<i>Fennel v Stewart</i>
An exception to the above rule: there was a private religious service and was held to be a charitable trust BUT there was no challenged to the presumption of a public benefit in this case.

- (ii) Indicate the requirement of a God and worship of that god and assess whether it will continue to be a requirement citing relevant authority.

- There is a question about what constitutes a religion. The Traditional view of *Re; South Place Ethical Society* is that religion requires faith in and the worship of a god.
- The requirement of a god and worship of that god would not uphold under freedom of religion protection s. 2
- Australian Court *Church of the New Faith v Commissioner of Pay-Roll Tax*: suggested that criteria (1) something amounted to “religion” where there was a belief in a “supernatural being, thing or principle”
- Another suggestion: considered a religion where “there were accepted canons of conduct that might include a person’s moral or ethical behavior as well as duties of ritual observance”

Knowledge Objectives: Other Purposes Beneficial to the Community

- (i) Be able to describe the types of things that have been included in other purposes beneficial to the community

- Two broad categories (i) Social welfare purposes and (ii) community purposes
- Trusts that have been upheld for community purposes have included trusts to provide for public works or amenities
- Trusts for sports have not been considered purpose trusts *Re Nottage*
- A trust or organization promoting sport can **only be** considered to be for a charitable purpose if it falls in one of the other heads of charitable purpose or some other recognized charitable purpose under the fourth head.

Traditional Approach

- The law must regard it as charitable
- 1601 Statute of Charitable Uses: *a charitable purpose is valid if it is in some way, perhaps through analogy or analogy upon analogy, traceable back to the preamble to the 1601 Statute of Charitable Uses.*

Move Toward a Flexible Approach: Spirit and Intendment

- courts of England took a broader approach. NOT adopted by SCC
- *Native Communications Society*: held that the purpose of the trust was beneficial to the community within the spirit and intendment of the 1601 Statute
- court held that there needs to be a *flexible approach because what is charitable needs to change over time to respond to new social needs as they arise.*

Traditional Approach Retained

- SCC returns to the traditional approach in *Vancouver Regional Freenet Association v Minister of National Revenue*, of looking to the preamble and finding the purposes to be within the preamble by way of analogy.
- Law: proceed by way of analogy to the purposes already found to be charitable by the common law subject to the requirement of providing a public benefit. Whether a purpose is charitable is to look to the preamble to the Statute of Charitable Uses and to analogies to the preamble and then to analogies upon the analogies.
 - Reaffirms the approach of courts to Charity
 - Confirms that it is not sufficient under the fourth head that the purpose be beneficial to the community, it also must be consistent with existing case law
 - Reject the broader “spirit and intendment” approach and returns to the traditional

Knowledge Objectives: Exclusivity

(i) Articulate the exclusivity requirement and the reason for it

- Exclusivity requirement for charitable purposes is that it be intended that the trust property be devoted exclusively to the charitable purpose
- The reasons for this is that if the trustee had discretion to use the funds for either charitable or non-charitable purposes/persons, it would be hard to enforce the use of the trust property for charitable purposes.

(ii) Discuss ways of avoiding the application of the rule

- Five ways of avoiding having a trust declared invalid on the basis of non-exclusivity
 1. Interpret the intention as really being an intention to have all the property devoted to charitable purposes
 2. Read the non-charitable part as charitable based on who the donee is;
 3. Sever the non-charitable portion;
 4. Find the non charitable purpose to be merely ancillary to the charitable purposes
 5. Apply a statutory provision to sever the non charitable portion

Reinterpret per Intention of Settlor

- Court may interpret the apparently non-charitable purpose to be a charitable purpose
- *Jones v T Eaton Co*: “deserving” caused issues but the court interpret that the testator would not have intended “deserving” in the sense of merit, industry, intelligence and loyalty.

Read the Non-Charitable Part as Charitable based on who the Donee is

- Reading it as being exclusively charitable based on who the donee is
- *Blais v Touchet*: “charitable purposes, religious and **otherwise**”. Court considered that the intended trustee was a bishop and so “otherwise” was meant to be limited to other charitable or religious purposes.

Sever the Non-Charitable Person

- Will sever the non-charitable portion of a trust IF doing so would not render the trust substantially different than the trust the settlor intended to create

Find the Non-Charitable Purpose to be Merely Ancillary to the Charitable Purpose

- Where it is possible to argue that the non-charitable purposes are merely ancillary to accomplishing the charitable purposes.
- *Guaranty Trusts Co*
- Law allows that if there are purposes that are merely incidental to the charitable purposes, in the sense that they were merely a means of fulfilling the charitable purposes, then the purposes can still be said to be exclusively charitable purposes.

Apply a Statutory Provision

- S. 47 of the Law and Equity Act

Knowledge Objectives: Political Purposes

- (i) Articulate the general rule concerning political purposes and charitable purpose trusts
- The rule: trusts for “political purposes” are invalid even where they are for otherwise charitable purposes
 - *McGovern*: political purposes include not just the (i) promotion of a political party; (ii) promotion of a candidate; (iii) promotion of political ideas; but also (iv) attempts to influence the legislative or executive process, to influence government policy or improve international relations and; (v) attempts to influence foreign government decisions or foreign laws
- (ii) Give reasons for the rule and arguments against the rule
- The reason for the rule *Bowman v Secular Society* is that a court has no means of judging whether a proposed change in the law will or will not be for the public benefit and the court would have to acknowledge that the current law may be flawed, if debating that laws was considered a public benefit
 - Arguments:
 1. A public benefit in simply encouraging debate and pluralism, and it is argued, this can be supported without the courts taking sides in a political debate
 2. Many religious organizations seek to influence the legislative process
 3. Some organizations are accepted as charitable organizations because their activities merely have ‘incidental’ political activities/purposes.
 4. The scope for “not for political purposes doctrine” is too wide

<i>Human Life International in Canada Inc</i>
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court held that political activities were not limited to those referred to in <i>McGovern</i>

Knowledge Objectives: Discriminatory Conditions

- Public policy concern that is most likely to arise in the context of charitable purpose trust is the developing public policy concern with respect to discrimination
- *Leonard Foundation Trust*: was a charitable purpose for the purpose of advancement of education and provided a public benefit, however concluded that it was void on the basis that it was contrary to public policy. The court has to analyse the context, purpose and effect of the restriction to see whether it promotes equality or not (in regards to scholarship funds for minorities, women or other disadvantaged groups)
- *Re Ramsden Estate*: scholarship to protestant students, allowed. Differed from *Leonard Foundation* on the basis that *Leonard* was based on blatant religious supremacy and racism
- *University of Victoria foundation*: bursaries for Roman Catholics allowed. Again, it was not clearly offensive and so allowed.

Knowledge Objectives: Administrative Scheme-Making Powers and Cy-Pres Scheme-Making Powers

- (i) Describe the administrative scheme-making power of the court
- Powers to address certain types of problems with respect to charitable purpose trusts. Two types of schemes (1) administrative scheme and; (2) *cy pres* scheme
 - Differences between the two:
 - Admin: the trust property is not directed towards a purpose near to the original purpose, it is directed to the settlor’s original purpose but with the scheme for carrying out the settlor’s purpose, that settlor in some respect failed.
 - *Cy pres*: intended purpose is impossible or impractical to carry out

(ii) Give examples of circumstances when the administrative scheme-making power will apply and when it will not apply

- Occurs where it is clear that the settlor has a charitable interest but the settlor has not made the intended charitable purpose sufficiently clear
- Trustee can apply for the making of an **administrative scheme** for devoting the trust property to charitable purposes.
- **Administrative schemes** have been approved to clarify what is to be done to meet the intended charitable purposes, to deal with excess income the trust property has generated, to appoint new trustees where the trustees are neglecting their office or breach of trust, or to remove a discriminatory condition, vary trustee's investment powers.

(iii) Describe the *cy près* power of the court and the purpose for the power

- The *cy près* power is used by the court where a charitable purpose is, or has become, impossible or impracticable to carry out.
- The court may apply the funds to another purpose or purposes "near to" the original ones (*cy-pres* means near to).
- May apply where the funds can no longer be devoted to particular purpose or where the property in the trust is incapable or likely incapable of being applied to the particular purpose

(iv) Give examples of circumstances when the *cy près* power will apply and when it will not apply

Impossibility: No One Who Can Benefit

- No one who might benefit from the charitable purpose
- *Re Kunz Estate*: orphanage no longer provided scholarships to children and so the trust would not benefit anyone

Impossibility: Surplus from a Fund Raising Campaign

- Funds might be sought to carry out a charitable purpose but not enough is obtained. Donations cannot be given back and thus a *cy-pres* application can be applied

Impossibility: Surplus Remains Because Funds were Obtained From Another Source

- Not actually used because more than enough funds became available from another source

Impossibility: Charitable Purpose Trust is Found to Violate public Policy

- Contrary to public policy after the fund was initially created, allows for the modification of trust terms to conform to public policy. *Leonard Trust*

Impossibility: Organization to which the Funds were to be given has Ceased to Exist

- The court will direct the gift to another organization

Impracticability:

- *Re Schneckenburger*: funds allocated for a German church. Another church was built 4 miles away, no need to use those funds for another church. *Cy-Pres* application
- Not held to mean that there is, in the view of the trustees, a better use that could be made of the funds.

(v) Discuss how the *cy près* power applies in cases of initial failure and cases of subsequent failure

- If the impossibility or impracticability arose **after** the trust was constituted then *cy-pres* operates automatically
- If it occurred **before** the trust is constituted, the court looks to whether there was a general charitable intent

Re Killam Estate

court ordered an administrative scheme making power. The power was broad enough to allow it to order the trust to be varied to allow the trustees to use the total income method they proposed.

Administrative schemes fill in the gaps and in this case, what the court arguably did was simply to modify the administrative scheme to deal with a situation which had not been anticipated, even though the directions of Killam had been clearly expressed.

Initial Failure and the General Intent Concept

- The reasons for looking at the general charitable intent has to do with directing the use of the funds in a way that is consistent with the intent of the settlor
- If the failure occurred – would the intent be to give to another charitable purpose

Subsequent Failure – No Search for General Intent

- Subsequent failure arises where some impossibility or impracticability has arisen after the trust was constituted.
- There is no requirement here to find a general charitable intent.

Variation in BC under the Charitable Purpose Trust Preservation Act

- S 3(4) of the act: in response to *Christian Brothers*. Legislation for variation in BC of trusts.

*If a charity holding **discrete purpose charitable property** is **unwilling or unable** to continue to keep, administer and use the property to advance the purpose, the court may make whatever orders, including arrangements, it considers appropriate, including transferring the property to another charity, so that the property is kept, administered and used to (a) advance the discrete purpose, or (b) advance another charitable purpose that the court considers is consistent with the discrete purpose.*

Lee v North Vancouver School District

S 3(4) was not limited to the specific circumstances of that case and had a more general application. Court applied 3(4) to vary the trust and to allow the funds to be transferred to a Foundation and that the annual award could be funded out of capital.

Re Mulgrave School Foundation

sought to use 3(4) to alter the trust. Mulgrave did not provide evidence indicating that it was unwilling or unable to continue to keep, administer and use the property to advance the purpose. The judge was unwilling to give an expansive reading and said the applicant must meet the conditions.

Knowledge Objectives: Seizure of Assets Held in Charitable Purpose Trusts with a Common Trustee

- Traditionally trust law has treated the assets held on a particular trust to be a separate estate from the non-trust assets owned by the trustee so that the personal creditors of the trustee can only claim the personal assets of the trustee but not the assets they hold in trust
- Immunity from seizure of assets held in trust, other than the trust the carrying out of which resulted in liability

Re Christian Brothers of Ireland in Canada

Court held, contrary to the traditional trust law approach described above, that the assets held by CBIC on trust for the purposes of Vancouver College and for the purposes of St. Thomas could be seized to satisfy the claims of the Orphanage victims.

Court held that there was not Canadian jurisprudence that there was charitable immunity from tort judgments.

- Dissenting opinion in *Rowland v Vancouver College*: held that the Christian brothers did not follow the law in BC in regards to trusts and seizure of assets.

Common Uses of Express Trusts

Issue	Ratio	Notes
Time Limited Interests in Property	<p>Real property can be divided up over time (estates), but law did not develop a way to do this for personal property. Use trust to create time-limited interest in personal property.</p> <p>Examples:</p> <ul style="list-style-type: none"> - Life estate - Series of life interests (watch remoteness of vesting) - Determinable interest i.e. until you reach a certain age - Useful for estate planning, lets you provide for loved ones for life and then give to charities or other people 	Although can still create legal interest in property for period of time, more common in Canada to use trust to create time-limited interest in real property.
Discretionary Trust	<ul style="list-style-type: none"> ○ Provides flexibility: <ul style="list-style-type: none"> - Allocate income among defined class according to need, education or something else - Facilitate tax planning - Creditor protection-don't distribute to bankrupt beneficiary so creditors can't get it - Provide for spendthrift beneficiary ○ Watch perpetuity issues ○ Ensure beneficiaries are certain ○ Can give over capital and/or income ○ Consider what to do with undistributed income and/or capital... if no indication it will revert back to settlor and may have unintended tax consequences, or go through their estate and then have to look at estate to figure out. ○ Avoids rule in Saunders v. Vautier 	<p>Control Discretion:</p> <ul style="list-style-type: none"> - Put constraints in trust instrument, but this reduces flexibility and raises uncertainty concerns - Require consultation with the settlor, but this may have tax implications. 75(2) ITA—taxed as income of settlor - Letter of wishes: guidance to trustee, but not binding, trustee must exercise discretion according to trust instrument and their duties - Use “protector”: a person other than trustee appointed to exercise discretion or trustee must consult with before exercising discretion. Used in offshore trusts.
Contingent Interests	<ul style="list-style-type: none"> ○ Beneficiaries can be given contingent interests in income or capital ○ Watch remoteness of vesting ○ Can help avoid rule in Saunders v. Vautier if contingent interest is in favour of someone who refuses or unborn person etc. 	
Spend Thrift Beneficiaries	<ul style="list-style-type: none"> ○ Where you are afraid if you just give it they will waste it all ○ Pays allowance to spend thrift ○ Frustrated if spendthrift assigns interest, so make it discretionary ○ If sole beneficiary, watch rule in Saunders ○ If put restraints on alienation might be contrary to public policy 	

Trust for Disabled Persons	<ul style="list-style-type: none"> ○ Statutory benefits paid to disabled person are reduced and eventually eliminated depending on disabled person's assets ○ Beneficial interest in a trust is usually included in calculation of assets ○ Therefore while trust provides source of support, it may cut off other source of funds making purpose of trust self-defeating ○ To resolve: give trustee absolute discretion over making payments out of income or capital, so that interest is contingent on exercise of discretion ○ b/c they only have a contingent interest, not included in assets and can keep getting gov. benefits ○ watch rule in Saunders, if it can be collapsed then might be able to argue they do have a vested interest. ○ Watch accumulations legislation in Ontario 	Ex: <i>Henderson</i> , trust which gives trustees absolute and unfettered discretion means that disabled person could not compel trustees to make payments to them, and therefore, disabled person does not have "beneficial interest" to be included in assets.
Testamentary Trusts	<ul style="list-style-type: none"> ○ Do all the things above, but just in a trust created by a will. ○ Taxed at graduated tax rates that apply to individuals ○ Multiple testamentary trusts creates opportunities for splitting income and reducing the tax applicable to each 	
Secret Trusts	<ul style="list-style-type: none"> ○ Used where WM does not want other persons to know that a gift was made to the beneficiaries 	
Insurance Trusts	<ul style="list-style-type: none"> ○ Testamentary Insurance trust, person designated as beneficiary under a life insurance policy receives the funds from the policy on the death of the policy holder in trust ○ Normally insurance policy indicates that the designated beneficiary under the insurance policy will receive funds in trust subject to the terms of a separate trust instrument—could be in a will ○ Reduces probate fees since payment does not form part of the estate ○ Confidential b/c trust instrument is not a public doc ○ Provide degree of creditor protection b/c exemption in provincial legislation for life insurance that benefits spouse, child, grandchild or parent 	<ul style="list-style-type: none"> ○ Inter vivos insurance trust, trustee holds rights under a contract of life insurance during the life of the insured. ○ Disadvantaged: taxed at highest rate

	<ul style="list-style-type: none"> ○ Benefits from graduated tax rates b/c testamentary 	
Spousal Trusts	<ul style="list-style-type: none"> ○ Under ITA settlor is considered to have disposed of property if the trust is created by the settlor transferring property to another to hold as trustee or when they declare themselves trustee. Capital gains paid on any property so disposed of. ○ Exception: spousal or common-law partner trust ○ Property transferred to spousal trust is not subject to capital gains tax "rolls over" into the trust ○ Settlor deemed to have disposed of property but at cost of acquiring, and trust deemed to have acquired at the same cost ○ Tax on capital gain will instead be paid by the trust if it disposes of property or by beneficiary to whom capital property is distributed when that beneficiary later disposes of the property ○ Capital gains paid on the later of the death of the settlor or the settlor's spouse ○ Rollover is provided b/c in theory there is no change in benefit of the property ○ 21 yr deemed disposition rule does not apply to spousal trust ○ Can be testamentary or <i>intervivos</i> 	<p>Requirements <i>intervivos</i>:</p> <ul style="list-style-type: none"> (i) Both settlor and trustee must reside in Canada when trust constituted (ii) Trust must be created by the person who makes the transfer of property (iii) The settlor or the settlor's spouse/common-law partner must be entitled to receive all of the income during the settlor's life (iv) No person other than the spouse or common-law partner may receive or have the use of any of the trust income or capital during the lifetime of the spouse or common-law partner. <p>*note income attributable back to the settlor spouse</p> <p>Requirements testamentary:</p> <ul style="list-style-type: none"> (i) Immediately before death settlor must have been resident in Canada (ii) Property must be transferred as consequence of WM's death (iii) Property must vest indefeasibly in the trust w/n 36 months of the date of death of taxpayer (iv) Spouse or common-law partner of WM must be entitled to receive all the income of the trust arising before the death of the spouse or common-law partner; and (v) Before the spouse or common-law partner's death no other person may receive or have the use of any of the trust income or capital. <p>*note opportunity for income splitting</p>
Alter Ego Trust	<ul style="list-style-type: none"> ○ Create <i>intervivos</i> trust to avoid probate fees by giving yourself a life interest and directing remainder to who would otherwise have to receive through your will (estate) ○ After 2000, ITA allows w/o triggering capital gains ○ Exempt from 21 year deemed disposition ○ when settlor dies, deemed disposition 	<p>Requirements:</p> <ul style="list-style-type: none"> (i) Created after 1999 (ii) The settlor transferring property must be 65+ (iii) The settlor must be entitled to all the income from the trust every year until their death; and (iv) No one other than the individual can be entitled to receive income or capital while the settlor is alive.

	<p>and the 21 year deemed disposition rule will apply (if trust continues)</p> <ul style="list-style-type: none"> ○ Created by single individual ○ Confidentiality, creditor protection, avoid wills variation claim 	
Joint Spousal Trust	<ul style="list-style-type: none"> ○ Create inter vivos trust to avoid probate fees by giving yourself a life interest and directing remainder to who would otherwise have to receive through your will (estate) ○ After 2000, ITA allows w/o triggering capital gains ○ Exempt from 21 year deemed disposition ○ Capital gains paid on the later of the settlor or the settlor's spouse ○ If trust continues after both spouses dead, the 21 year deemed disposition rule will apply ○ Created by single individual ○ Confidentiality, creditor protection, avoid wills variation claim 	<p>Requirements:</p> <ul style="list-style-type: none"> (i) Created after 1999 (ii) The settlor(s) transferring property must be 65+ (iii) The couple must be entitled to all the income from the trust every year while they are alive; and (iv) No one other than the couple can be entitled to receive income or capital while either spouse is alive.
Estate Freeze	<ul style="list-style-type: none"> ○ Use where you have assets that are likely to appreciate in value: freeze the value for the person in the higher tax bracket, have appreciation in value accrue to person in lower tax bracket. ○ Can defer capital gains. 	See p. 273 CB
Charitable Remainder Trusts	<ul style="list-style-type: none"> ○ Trust with one or more life interests followed by a remainder interest in favour of a named charity ○ b/c vested interest in registered charity there is a present gift to the charity, vested in interest although not possession ○ tax credit can therefore be taken for the donation ○ value of donation is the present value of the capital of the trust to be received by registered charity at the end of the life interest ○ calculate value considering projected date of death, and amount that will grow in that time ○ must be irrevocable ○ must have no power to encroach on the capital b/c then no way to calculate the value of the donation 	
Education Trusts	<ul style="list-style-type: none"> ○ created for the education of the settlor's children, grandchildren or other relatives ○ inter vivos or testamentary ○ may trigger the 21 deemed disposition under ITA ○ watch accumulations legislation in ON ○ consider application of rule in Saunders 	
Pour-Over Trust	<ul style="list-style-type: none"> ○ Refers to the addition of property to an existing trust pursuant to a will ○ A 'pour over' will is a will that adds property to a pre-existing trust 	

	<ul style="list-style-type: none"> ○ Inconsistent with wills legislation to create inter vivos trust that allows alterations and then executing will to add property to that trust ○ Can only do if trust is not revocable or capable of being amended by WM
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TRUST LAW CHECKLIST

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ADMINISTERING A TRUST

ID three issues:

- 1. Did the alleged trustee accept the role as the trustee?
- 2. What are the obligations?
 - POWERS: give the person permission to do something [not just given to the trustee]
 - Administrative Powers: allows the trustee to manage the property [sell, invest and insure]
 - Dispositive Powers: allows for disposition of property: disposition of income, or capital to beneficiaries
 - Power of Appointment: allows for the trustee to choose among a class of persons for a distribution of income or capital
 - PERSONAL POWER: under no obligation to exercise the power. Only that he or she exercise in terms of the power of appointment
 - FIDUCIARY POWER: donee of the power is expected to at least consider the exercise for the power.
 - TRUST POWER: the donee must exercise the power. There is a legal obligation.
- DUTY: obligations of the trustee that they *must do*
 - Duty of loyalty, impartiality, not to delegate, duty of care
- 3. Has the trustee received legal or equitable title to the property, in order for the trust to have come into existence?

Express Trust for Persons

Creation

A legally valid express trust requires:

1. The Settlor must have **Capacity**
2. The **Three Certainties** must be present
 - a. Certainty of intention
 - b. Certainty of subject matter
 - c. Certainty of objects

3. The trust must be **Constituted**
4. Any **Formal Requirements** for the formation of the specific kind of trust must be met
5. The trust must not be contrary to **Public Policy** or for an **Illegal Purpose**

A VALID EXPRESS TRUST FOR PERSONS

STEP 1: CAPACITY: Does the settlor of the trust have the legal capacity to create a trust?

□ Apply the Law

“State the Law: to transfer property into the hands of a trustee or to validly declare oneself to hold property in trust on behalf of another one must have the legal capacity necessary to deal with the property intended to be the subject matter of the trust”

A settlor **MUST**:

- Be a legal person (individual or corporation), as only legal persons can hold an interest in property
- Have an interest in property, as a trust obligations applies to property
- Have legal capacity to deal with their interest in property, as a settlor disposes of their interest in property by creating a trust

CONSIDERATIONS for LEGAL INCAPACITY

- MINORS: (under age 19 in B.C.) has very limited capacity to deal with property
 - **Testamentary Trust**
 - S. 36 of the *Wills, E & S Act* 16 years and mentally capable – may make a will
 - Minor cannot make a trust if under 16 in BC, unless they are in the arm
 - **Trusts Created by K**
 - Ks entered into by minor are voidable by minor unless they have been confirmed after reaching age of majority or are not repudiated w/n reasonable time of reaching age of majority
 - There is an exception for “necessaries” of life for the minor or long term Ks concerning land (ie – lease) – these are binding unless repudiated by minor within a reasonable time, having reached the age of majority.
 - So *inter vivos* trust created by minor pursuant to K likely voidable by minor.
 - **Gift on Trust**
 - common-law always concerned with benefit of minor, so such a gift may be void
 - Also jurisdictions have restricted minor’s capacity to dispose of property —i.e. Ontario need court approval, and approval only given if disposition for child’s support or education.
 - **Minor as Trustee**
 - b/c of minor’s inability to K , it may be very hard to deal with trust property for purpose of trust
- MENTAL INCAPACITY: question is *whether it would make the person incapable of understanding substantially the nature and effect of the particular transaction*
 - **Test: Must understand**
 - **For Trust**

- (1) the nature and effect of the creation of the trust
 - (2) the extent of the property being disposed of
 - (3) who will be benefitting from the holding of the property
- **For Will**
 - (1) nature and effect of making a will
 - (2) extent of property being disposed
 - (3) appreciation of needs of his/her dependents
- NOT RECOGNIZED as a PERSON: *cannot enter into a trust or contract*
 - Unincorporated associations are not legally recognized persons
 - Partnership or trust
- BANKRUPT: Bankrupt's property is vested in trustee in bankruptcy under *Bankruptcy and Insolvency Act*. So bankrupt has no interest in property to settle in a trust, and therefore likely does not have the capacity to create a trust
- **Apply the law using facts to prove capacity by the settlor :**
 - in the express trust I would argue that Y would be the settlor who created an express trust by "declaring himself to be a trustee of _____ , or by declaring X to be the trustee, so X would have to have capacity to deal with the property"
 - These facts : _____ support that X is over the age of 19 (18) and no longer a minor
 - These facts: _____ support that X would presumably have had the capacity to understand substantially the nature and effect of transactions such as the purported creation of a trust

STEP 2: THE THREE CERTAINTIES: *Knight v Knight*

Assess whether the three certainties are met in the context of a given fact pattern, setting out the relevant rules and applying them to the facts and, if asked to do so, consider underlying factors that may influence a judicial decision on whether all of the three certainties are present.

1. CERTAINTY OF INTENTION

- **Certainty of Intention:** refers to the intention of the settlor to create a trust
- **Apply the Law for Certainty of Intention**

"State the law: for an express trust to exist there must be certainty (i) that another person is to hold property on trust for other persons or purposes or (ii) that the settlor himself holds property on trust for another person or purposes"

the intention can be expressed in writing, orally or inferred from written or oral evidence or even from the circumstances or conduct alone - no specific words are required to create a trust and words such as "in trust" or "as trustee for" are not required to show such an intention to create a trust nor do they necessarily lead to a finding of trust

Precatory expression are usually not sufficient to create a trust " my hope, my wish, my expectation, etc" unless sufficient intention is found to create the trust

No formal steps required except in certain circumstances – testamentary trusts and statute of frauds

A. Intention can be:

- Orally
- In writing
- Express
- Inferred from conduct; or circumstances
 - Intended to make a full gift, therefore anything following is repugnant (**Walker**)

<i>Re Walker</i>	Facts: should any portion of my estate still remain in the hands of my said wife at the time of her decease undisposed of by her such remainder shall be divided” among certain persons in named proportions
	Decision: either the gift predominates or the gift over predominates – here the gift predominated and therefore the words do not show a sufficient intention to create a trust. No intention to create a trust because made a gift of property with no restraint, did not show sufficient intention to create a trust.
	Ratio: This is not a strict ratio saying wherever you make a gift, anything following that is repugnant. Matter of interpretation of the circumstances which demonstrates <i>intention</i> of settlor.
<i>Re Shamas</i>	Facts: “All will belong to my wife until the last [child] comes to the age of 21 years old ... If my wife marries again she should have her share like the children if not, she will keep the whole thing and see that every child gets his share when she dies.”
	Decision: wife held on trust but could encroach on capital until her death for the maintenance and education of her and the children and this was based on circumstances present when will was made.
	Reasons: trust b/c inferred intention of testator to provide for the family.
	Ratio: Must interpret the words of the whole will in light of the circumstances the testator found himself in at the time he drafted the will.

B. Formal Requirements

- **No** formal requirements: doesn't have to be written or witnessed
- Exceptions:
 - Testamentary trust (must meet will formalities)
 - Any transaction subject to the statute of frauds or similar statute.

C. Specific Words

- No specific words are required – Court looks to intent
 - The word “trustee” is indicative but not conclusive of intention
- “Hopes” “Wishes” “Desire” are NOT enough to create intention. Moral obligations not legal
 - If these words are used, may be evidence of lack of intention. However still look to all circumstances—not conclusive. Where words used and it is a trust, then referred to as “precatory trusts” although this makes no difference in way trust works.
 - “Wish” not strong enough for intention (**Johnson**)

<i>Johnson v Farnley</i>	Facts: “I also wish if you (my wife) die soon after me that you will leave all you are possessed of, to my people and your people equally divided between them, that is to say your mother and my mother's families.”
	Decision First Court: “wish” was not considered strong enough for certainty of intention to create a trust.
	Appeal Court: one <u>must look to the whole will</u> to see if a trust was intended even though the word “wish” was used - “wish” here was just a suggestion <u>based on looking at the whole will</u> . <u>Not a trust</u> .
	Note: However, remember can't just look at the words—not automatically not a trust if word “wish” used—look at whole will and all circumstances to determine whether precatory words create a trust.

- **Apply the facts for Certainty of Intention**

- since trusts can be created orally/written the oral/written nature of the terms of the agreement between X and Y would (but subject to the formalities discussed below) not prevent a finding that there is a trust
- also there is no/was an indication that the words “in trust” or “as trustee for” were used by X in the oral agreement / or not used in the letter written and signed by X, but a trust could still be found since such words are not required to show an intention to create a trust

Examples

- **OR** here there was a oral/written contractual arrangement [that lacked the terms “in trust”] (since there was an exchange of promises) and that arrangement may have been entirely contractual and may not have indicated an intention that X hold one acre **on trust** (i.e., the intention might have been to transfer title to a one-acre lot of choice not to hold on trust) thus could argue that it is NOT a trust obligation
- while the letter written may not say “in trust” or “as trustee for” it does express a promise by one to hold “on behalf of” another and that fits the concept of certainty of intention noted above that “the settlor himself holds property on trust for another”

2. CERTAINTY OF SUBJECT MATTER

- **Certainty of Subject Matter:** the property that is to be held in trust AND the amount/share of the trust property that the beneficiaries are to receive.

- **Apply the Law for Certainty of Subject Matter**

“State the law: there are two aspects to certainty of subject matter: (i) certainty of property subject to the trust obligation; and (ii) certainty of amounts the beneficiaries are to receive. It is important for the trustee to know, with a reasonable degree of certainty, what property the trust obligation relates to and what the obligation is with respect to the distribution of income, property or capital trust.”

in **Re Beardmore** it was said that the certainty of subject matter must be known at the time the trust takes effect

The property and the person to whom it is to be given, must be certain, in order to raise a trust (**Sprange**)

- **A Certainty of Property Subject to the Trust Obligation**

State the law: certainty of property subject to the trust obligation can be met by (a) reference to a specific piece of property or; (b) to a formula for determining the property subject to the trust obligation

If the court can, on objective standards, identify the quantum of trust property on a request by the trustees then the trust will not fail.

A. Ways to be Certain

- Reference to a specific piece of property ie. legal description of land
- Reference to a specific fund or amount of specific fund ie. bank, account #, and transit #
- Formula to determine ie. “sufficient sum to pay \$100 per month”
- Okay if it is uncertain at time will is written or takes effect for testamentary
- If capable of identification on objective basis i.e. sufficient sum so as to provide

reasonable income for A would be OK (**Re Golay's Will Trust**)

- For *inter vivos*, nominal sum can be put in and you can add more money later... but don't try to define further contributions with ambiguous language or trust may be void/left with only nominal sum.

Not Certain

- Amount not known at the time "3/5 of the net estate" (**Beadmore**)
- Unknown which bank accounts to be split up "from 3 accounts, 4 listed" (**Romaniuk**)
- **A. Apply the facts for Certainty of Subject Matter: Certainty of Property**
 - it might be argued that the trust came into effect when X did _____, at which time, in accordance with the *Re Beadmore* point, there was certainty of subject matter at the time the trust took effect
 - if that did not work then perhaps one might argue there was a formula for determining the subject matter of the trust with the formula being _____.

<i>Re Golay's Will Trust</i> [Property]	Facts: "A sufficient sum of money so as to provide reasonable income for A"
	Decision: Held to satisfy the certainty of property subject to the trust
<i>Sprange v Barnard</i> [Property]	Facts: "for his sole use; and, at his death the remaining part of what is left that he does not want for his own wants and use, to be divided among ..."
	Decision: held that property here was only "what shall remain at his death" and "only so much as he shall not want for his own wants" and if a trust it "would be impossible to execute."
	Ratio: <i>The property and the person to whom it is to be given, must be certain, in order to raise a trust.</i>
<i>Re Beadmore Trusts</i> [Property]	Facts: Husband executed settlement when separating with wife, states that he was to provide three-fifths of net estate to her on his death. Wife predeceased husband. Husband brought motion for order trust settlement was void.
	Decision: <i>inter vivos</i> trust failed b/c not certain what property—said '3/5 of net estate', but wouldn't know 'net estate' until after husband's death and therefore subject matter of trust could not be known at the time it was to take effect—i.e. while husband alive.
	Note: Would have been valid testamentary trust b/c executor would pay all estate's debts etc. and would know the net amount, subject matter would be certain—BUT was not executed in a way that complied with wills legislation and therefore could not take effect as a testamentary trust.
<i>Re Romaniuk</i> [Property]	Facts: Testatrix states that certain money "from my bank accounts" is to be divided into equal portions, and held on trust for two people when they attain 21. In will, testatrix lists three banks accounts. In reality, testatrix has four bank accounts.
	Decision: unable to resolve the ambiguity as to which bank accounts were to be held in trust - concludes it is not a valid trust. Unclear whether just the three bank accounts or all bank accounts was intended—no certainty of subject matter. Trust failed, property reverted to estate to be distributed according to intestate succession rules.

- **B. Certainty of Amounts the Beneficiaries are to Receive**

State the law: Certainty of the Amounts Beneficiaries are Entitled to Receive can be satisfied in three ways:

B. Ways to be Certain

- Clearly setting out the amount each beneficiary is to receive;
- Providing a method for calculating the amount each beneficiary is to receive or;
- Giving the trustee a discretion to decide the amounts the beneficiaries are to

receive

Ways NOT to be Certain

- Unclear how property to be distributed “Person 1 can choose Person 2 gets the rest but Person 1 died” (**Boyce**)
 - Providing a method for calculating the amount each beneficiary is to receive or;
 - Giving the trustee a discretion to decide the amounts the beneficiaries are to receive
-
- **B. Apply the facts for Certainty of Subject Matter: Amounts the Beneficiary Receives**
 - here the amount beneficiaries are to receive is clear since there would only be (a) one beneficiary getting the whole property or (b) it's set out specifically: _____
 - or are there two beneficiaries since interpretation might something different: example a life interest for X with remainder for Y – if so then interests of beneficiaries would be clear with X having a life interest and Y the remainder interest

<i>Boyce v Boyce</i> [Beneficiaries]	Facts: four houses in trust, one to daughter Maria and remaining to Charlotte. Maria died before testator and therefore had not chosen a house.
	Decision: trust failed for lack of certainty of subject matter since it was not clear how the property was to be distributed – which to go to Charlotte.

3. CERTAINTY OF OBJECTS/BENEFICIARIES

□ Certainty of Objects/Certainty of Beneficiaries [for persons]

State the law: the objects of a trust must be certain so that the trustee (or a court on behalf of trustees) knows for whose benefit or for what purpose the property is held. Courts need to know who is to benefit or what purposes are to benefit in order to determine if the trustee has met obligations or if they have to administer.

If trusts for persons: means certainty of beneficiaries.

If trusts for purposes: means certainty of purposes.

There is an exception for Charitable Purpose Trusts that need only have certainty of charitable intent and if the purposes are not clear then the court will set out purposes

□ **A. Certainty of Objects**

- If the trustees are to hold the property for persons they must either know, or have some way of determining, who the persons are. [**certainty of beneficiaries**]
- If the trust is for a particular purpose then the trustee must know what the purpose is, or at least have a way of determining whether a particular act would be consistent with that purpose. [**certainty of purpose**]

□ **AI. Certainty of Beneficiaries for a Fixed Trust for Persons**

- Test for a fixed trust “class ascertainability test”. One must be able to identify all the

beneficiaries, to make a complete list : (**Broadway Cottages Test**)

- Determine whether any given person is a member of the class; and
- Identify every member of the class “complete list

□ **All. Certainty of Beneficiaries for a Discretionary Trusts for Persons**

Where the trustee has discretion to decide which beneficiaries within a given class will be entitled to benefits OR discretion to the amounts OR both

- the test for a discretionary trust only has to meet the first of the two parts of the fixed trust. “individual ascertain ability test”: (**McPhail v Doulton**)
 - determine whether any given person is a member of the class
 - conceptual certainty: means that the class is defined in a way that makes it clear enough to decide whether a person is within a class, cannot be so wide as to make administratively unworkable.
- the trustee needs to make a reasonable effort to identify the beneficiaries that fit within the class and to assess, in accordance with the discretion given, who among those beneficiaries should receive distributions from the trust – act in good faith.

Ways to be Certain

- “close friends” A small town and so you know (**Connor**)

□ **Apply the facts for Certainty of Objects**

- here the alleged trust would be a fixed/discretionary trust since the alleged trustee has/has no discretion as to choose among a class of beneficiaries or to determine how much income or capital beneficiaries would get – based on these facts _____ therefore, the test would be the fixed trust test /discretionary test
- here one can easily determine whether any given person is, or is not, a beneficiary since _____
- and one could make a complete list of beneficiaries because _____ [where it is a fixed trust]

<i>McPhail v Doulton</i>	Facts: “The trustees shall apply the net income ... in their absolute discretion ... to or for the benefit of any of the officers and employees or ex-officers or ex-employees of the company or to any relatives or dependents of any such persons in such amount at such times and on such conditions ... as they think fit”
	Issue: clarity of “relative” and “dependents”
	Decision #1: test is whether “it can be said with certainty that any given individual is or is not a member of the class” – do not need to ascertain every member of the class because it is a discretionary trust.
	Decision #2: the words “relatives” and “dependents” were sufficiently certain per Brightman, J. persons are “relatives” if “both trace legal decent from a common ancestor” and “the use of the expression ‘relatives’ cannot cause the slightest difficulty”
	Decision #3: appeal dismissed – words “relatives” and “dependents” sufficiently certain : “dependent” for ordinary necessities of life for a person of that class and position in life”
<i>Re Connor</i>	Facts: testator wanted residue of estate divided “among my close friends in such a way and at such time as my trustee in her discretion should determine”
	Decision: must be able to ascertain the whole class of “close friends” and this was too uncertain
<i>Jones v</i>	Facts: \$50,000 legacy in will to executive officers of the T. Eaton Company to be used by them as a

Executive Officers of the T Eaton Company	trust fund “for any needy or deserving Toronto members of the Eaton Quarter Century Club”
	Decision: SCC adopts <i>McPhail v. Doulton</i> , court looked at the context and accepted the submission of the intended trustees that the testator meant : “persons with whom the testator would either have worked personally or who would be working in the surroundings with which he was familiar and to which he was attached by his own personal experience”
	Ratio: possible to determine the intentions of the testator to mean the people that worked in Toronto.

STEP 3: CONSTITUTION of a TRUST

REQUIREMENTS FOR A TRUST TO BE CONSTITUTED

- Trustee must have title to the property : either legal or equitable, depending on the subject matter

State the law: for a trust to come into existence the trustee must have title to the property (be it legal or equitable) that is to be subject to the trust obligation. The title may be legal or equitable depending on the intent subject matter of the trust”

Result of Constituting a Trust: Once constituted, settlor cannot revoke or alter the trust unless this power has been expressly retained.

WAYS OF CONSTITUTING A TRUST

- Settlor can transfer the intended trust property to another person to hold as trustee;
- Settlor can declare himself to be a trustee with respect to property she owns
- A third party can deliver property to the intended trustee

in *Milroy v. Lord* two ways of constituting a trust were noted – one can either: (i) transfer the property to another person to be held in trust for the intended donee (ii) declare oneself to be the trustee of the property or (iii) to have a third party transfer the property to the trustee that is intended to be the subject matter of the trust. The settlor must do everything he can to effect the transfer.

Declaring oneself to be a trustee requires clear evidence (*Milroy v. Lord*); see also e.g., *Paul v. Constance* and *Watt v. Watt Estate* as examples of situations in which the evidence was considered sufficiently clear to indicate that the settlor had declared himself a trustee

KEY POINTS

- Settlor must do everything he can to effect the transfer
- Three modes of transfer : direct gift, transferring to trustee, or declaring of trustee
- Courts will not substitute one mode for another (**Milroy**)³
- How Legal Interests in Property Are Transferred
 - **Land:** the instrument for transferring legal title to land usually takes the form of a deed
 - **Chattels:** transfer of title normally involves the transfer of possession. Sometimes a symbolic delivery may suffice.
 - Keys to a safe

- **Choses in Action:** transferred by assignment. The assignment must be in writing and signed by the assignor.
 - **Negotiable Instruments:** transferred by negotiation
 - **Securities:** security transfers are legislatively mandated and vary
- How Equitable Interests in Property Are Transferred

A person who has equitable interest in property can constitute the trust of that equitable interest by:

- an assignment of the equitable interest to a trustee on trust for the proposed donee;
- a declaration by that person that he or she is a trustee of the equitable interest for the proposed donee
- an instruction to existing trustees to hold the equitable interest in favour of the new intended beneficiary

Transfer of Property to Another:

<i>Milroy v Lord</i>	<p>Facts: Thomas Medley held shares in a company called the Bank of Louisiana, and wished to transfer them. The bank required the shares be transferred according to regulations in the company constitution. He wanted to give them to his niece, Eleanor Milroy. He signed a deed in Louisiana with Samuel Lord, for Lord to hold 50 shares on trust for Eleanor. (This was in fact made in consideration of \$1, but this was ignored.) He also gave Lord a power of attorney to receive dividends on the shares and to comply with the company constitution's formalities. Lord did not actually do it. Thomas Medley lived for three years after signing the deed with Samuel Lord, in which Samuel Lord was receiving dividends and passing them on. When Thomas Medley died the shares still remained in his name. Eleanor Milroy claimed that the shares belonged to her.</p> <p>Issue: Was the intended trust of the BoL shares constituted</p> <p>Decision: in order to render the settlement binding, one or other of the modes must, as I understand the law of this Court, be resorted to, for there is no equity in this Court to perfect an imperfect gift. The shares were never properly transferred to Lord as the trustee and therefore the trust was never properly constituted.</p> <p>Principle: Settlor must do everything he can to effect the transfer: (a) to another person on trust (b) self-declaration; or (c) actually transferring the property to those whom one intends to provide (direct gift) and the court won't subject one mode for another</p> <p>Facts in Relation to Principle:</p> <ol style="list-style-type: none"> (1) The intended mode was to transfer property to Lord. Thomas Medley did not intend to declare himself a trustee of BOF (2) Shares were never legally vested in Lord. He needed instructions from Medley to act on his broad power of attorney – to transfer the shares into his name. Medley needed to give direct instructions to Sam Lord to act on the power of attorney and transfer the shares into Lord's name
<i>Re Rose</i>	<p>Facts: Mr Eric Rose wished to transfer shares in the Leweston Estates Co to Mrs Rose, in consideration of her love and affection. He filled in the share transfer forms in 30 March 1943, and handed them to the Mrs Rosamond Rose, who gave them to the company. The company directors could refuse to register share transfers. But the company registered the claimants as shareholders in Mr Rose's place in 30 June 1943. Mr Rose died on 16 February 1947. The Inland Revenue wished to charge a tax, estate duty, on the transfer. It claimed the gift was not effected before 10 April 1943, so the tax was due.</p> <p>Decision: Mr. Rose had made effective transfer (done all he could do) and therefore was a trustee of the shares – transfer of the legal title was beyond his control (i.e., Mr. Rose had disposed of his equitable interest but transfer of legal title beyond his control). Valid Trust</p>

Declaration of Self as Trustee:

<i>Paul v Constance</i>	Facts: Mr. Constance opens bank account in own name, instead of joint account with Mrs. Paul on advice of bank manager – but Mrs. Paul given authority to draw on account. Mr. Constance dies in 1974 and Mrs. Constance becomes administratrix of his estate and takes the money from the account. Mrs. Paul claims the money in the account is hers and demands Mrs. Constance give her the money
	Decision: no technical words necessary for declaration of trust. Here not substituting since intention by Mr. Constance to declare himself trustee of bank account. clear evidence of intention to self-declaration of trust is required
	Reasons: valid declaration both deposited \$\$ to bank, used it for food and xmas gifts, deceased said he wanted GF to access his account – clear intention to declare trustee.
<i>Watt v Watt Estate</i>	Facts: Shirley did tasks at R.J.'s marina such as bookkeeping, dealing with customers and gardening. Shirley's husband and R.J. build a boat together. R.J. gives keys to boat to Shirley and she and her family use the boat for free until R.J. dies. Boat registered in R.J.'s name but before his death he wrote a note indicating joint ownership with Shirley
	Issue: (1) was there a gift of the boat? (2) If there was no gift, did RJ declare himself to be a trustee of interest in the boat for Shirley
	Decision: no gift because there was no delivery – keys did not constitute symbolic delivery since R.J. had given keys to other boats to Shirley with no suggestion of ownership and had given keys to the particular boat to other members of the family. written note was, however, effectively a declaration of trust – expressed an intention that was consistent with subsequently allowing Shirley free use of the boat

❑ **FORCING THE SETTLOR TO CONSTITUTE THE TRUST**

Specific Performance: Forcing Settlor to Deliver the Property to the Intended Trustee

❑ **Enforcing Constitution: Gratuitous Promises**

- ❑ court won't grant specific performance of gratuitous deed – therefore won't force settlor to transfer property to trustee – also therefore won't force trustee to sue or allow intended beneficiaries to sue to specifically enforce the deed
- ❑ court will enforce a promise in a deed with a remedy of damages
- ❑ if an intended beneficiary were a promise in the deed and sued for damages it would go to the beneficiary directly not the trustee and therefore would not constitute the intended trust
- ❑ may, however, be able to argue that promise in the deed was intended to be subject matter of the trust and therefore trust is constituted as soon as the deed is signed, sealed and delivered

Case Examples of Enforcing

- ❑ If you are named as a person whom a promise in a deed is made, you may seek SP (**Kay' Settlement**)

Case Examples of NOT Enforcing

- ❑ where there is no consideration, thus the deed is voluntary, SP will not be granted – unless your named (**Kays Settlement**)
- ❑ trustees may not enforce a promise where a beneficiary had no right in law to enforce it (**Pyrce**)

<i>Re Pyrcce</i>	Facts: marriage settlement deed, wife settled funds in trust and husband promised to settle any remainder interests he would be entitled to in the trust as well. When he got interests, he just gave
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	them to wife instead.
	Decision: trustee could not force wife to put them in the trust
	Ratio: Equity will not assist a volunteer, no right to SP. Trustees could not enforce in order to benefit beneficiaries who had no right in law to enforce the promise. Won't give indirect route.
<i>Re Kay's Settlement</i>	Facts: unmarried woman executed voluntary deed, promises to settle all after-acquired property on trust. She would have life interest, and power to appoint her husband for life should she pre-decease him. Remainder was to go with children. Later did have husband and children, but woman refused to settle funds in the trust.
	Decision: trustee cannot enforce
	Ratio: Specific performance will not be granted to enforce a voluntary deed (i.e. no consideration). Only persons who are directly named as persons to whom a promise in a deed is made can enforce the deed through damages remedy.
	Policy: Trustees should not be permitted to enforce trust through damages remedy where beneficiaries unable to enforce themselves.

□ **Gratuitous Deeds:** Seeking a Remedy of Damages Allowed

- trustee would be a direct covenantee in the deed (**Cannon**)
- if a beneficiary was named as a covenantee the beneficiary could sue for damages (but not specific performance if the beneficiary did not provide consideration)

<i>Canon v Hartley</i>	Facts: Deed of separation stated any time the husband entitled to inheritance, he would settle one half on trust for wife for life, remainder to daughter absolutely. Got inheritance, wife died shortly after and then husband refused to give to daughter. Daughter could sue for damages.
	Decision: If beneficiary is directly named in the deed, they are entitled to sue for damages if promisor refuses to settle trust. However, receiving damages does NOT constitute the trust... However you cannot make a SP claim because equity will not assist a volunteer.

□ **Gratuitous Deeds:** Recharacterization of the Subject Matter of the Trust

<i>Fletcher v Fletcher</i>	Facts: deed stated son was to receive 60,000 pounds 1 year after father's death. Money never given to trustees. However Court said the money was not the subject matter of the trust, rather the subject matter was a chose in action—a <i>debt</i> which was created by the deed. Once you put a debt into a deed, it is immediately enforceable. So it was constituted, b/c as soon as that deed was made the trustees had the subject matter of the trust—the chose in action.
	Decision:
	Ratio: Where the Court wants to enforce a gratuitous deed, find a way to say it was constituted: recharacterize the subject matter of the trust to show that it was constituted.

□ **Enforcing Constitution: Transfer for Value/Promises for Consideration**

- if intended beneficiary provided consideration to the settlor for the settlor's promise to settle on trust then could sue settlor – could lead to constitution of the trust if specific performance available (**Ellenborough**)
- if trustee provided consideration for the promise and specific performance was available the trust might be constituted – but if only damages then it would be just damages to the trustee (**Ellenborough**)

□ **Enforcing Constitution: Promises for Future Property**

- promise to convey property that one does not yet have but has some expectation of receiving in the future, such a promise is only enforceable if consideration for the

promise is given

- Need consideration to enforce (**Pyrce**)

<i>Re Ellenborough Twry Law v Burne</i>	Facts: settlor makes voluntary deed, promising to settle any inheritance she may be entitled to in a trust to named trustees. Ratio: An assignment of future property is enforceable if it is made in exchange for consideration. If it is not for value a court of equity will not enforce it, it will not assist a volunteer.
<i>Re Pryce/Re-Key's Settlement</i>	This was also promise to settle future property—same rules apply to future property as to currently owned property. Need consideration to enforce.

STEP 4: FORMALITIES

Introduction

- Formalities relate to Statutes of Frauds legislation and, for testamentary dispositions, compliance with applicable wills legislation
- *“here the alleged disposition is testamentary – and thus must confirm with wills legislation”*
- *“here it is not testamentary, so the question is whether it would need to comply with the statute of frauds or similar legislation”*

Questions to Determine

- non-testamentary – s. 59
- testamentary – wills act
 - semi-secret trust?
 - Secret trust?

State the Law

- the *Statute of Frauds* was repealed in BC, in 1985 and replaced by s. 59 of the *Law and Equity Act*
- BUT s. 59(1): disposition does not include
 - **creation of an interest under trust**
- s. 59(2): this section does not apply to
 - (a) a contract to grant a lease of land of a term of 3 years or less
 - (b) a grant of a lease of land for a term of 3 years or less, or
 - (c) a guarantee or indemnity arising by operation of law or imposed by statute
- s. 59(3): a contract respecting land or a disposition of land is not enforceable unless
 - (a) there is, in writing signed by the party to be charged or by that party's agent, both an indication that it has been made and a reasonable indication of the subject matter; OR
 - (b) the party to be charged has done an act, or acquiesced in an act of the party alleging the contract or disposition, that indicates that a contract or disposition not inconsistent with the alleged has been made, **[Part Performance]**
 - (c) the person alleging the contract or disposition has, in reasonable reliance on it, so changed the person's position that an inequitable result, having regard to both parties' interests, can be avoided only by enforcing the contract or disposition **[Reliance]**

Application of the Law: Examples from Past Q's [Non-Testamentary]

Enforceability of Ks: Does s. 59 Apply?

NO:

- the creation, assignment or renunciation of an interest under a trust
- a testamentary disposition.
 - must consider – is it a letter standing alone, as a gratuitous self-declaration of trust over land, then it would NOT be a disposition and s. 59 would NOT apply
- a contract to grant a lease of land for a term of 3 years or less
- a grant of a lease of land for a term of 3 years or less, o
- a guarantee or indemnity arising by operation of law or imposed by statute.

YES

- must consider – that s. 59 would ONLY apply to a **trust with respect to land** if it was pursuant to a contract with respect to land.
 - **Analysis:** Consider whether the letter reflected to an oral agreement/or some other agreement that involved a contract (exchange of caretaking, etc – some sort of service as consideration for “an interest” in property/object/etc)
- Then consider –whether it abides by the formalities: It is only enforceable IF:
 - In writing
 - Signed by the party to be charged
 - Where it met “an indication that it has been made and reasonable indication of the subject matter” – “it” referring to the K
 - Is there indication of the service/consideration for the object – to make it a K? and thus subject to K
 - if the person acquiesced in the performance of services over a period of time [example over 20 years] and those services are consistent with the contract that the other person could allege for the property
- Does 59(3)(c) apply – the person alleging the contract or disposition has, in reasonable reliance on it, so changed the person's position that an inequitable result, having regard to both parties' interests, can be avoided only by enforcing the contract or disposition.
 - Analysis: X has arguably acted in reasonable reliance on **the alleged contract** (receiving the object/land) and not enforcing the alleged contract would lead to an inequitable result since Y has been enriched by the efforts of X [caretaking, etc – services] over 23 years at X expense since X got nothing more than...

Application of the Law: Testamentary Trusts

Step 1: Do you have a valid will?

The wills legislation must be complied with in order to make a valid “testamentary disposition”. A “testamentary disposition” is one that “takes effect on death” of the person making the disposition.

Requirements of a Valid Will

- The Wills Act Requirements for testamentary trusts
- S. 37(1) To be valid, a will must be
 - in writing,
 - signed at its end by the **will-maker**, or the signature at the end must be acknowledged by the will-maker as his or hers, in the presence of 2 or more witnesses present at the same time, and
 - signed by 2 or more of the witnesses in the presence of the will-maker
- s. 37(2) a will that does not comply with subsection (1) is invalid unless
 - the court orders it to be effective as a will under s. 58 [court order curing deficiencies]

- it is a will recognized as valid under s. 80 [validity of wills made in accordance with other laws]; or
- it is valid under another provision of this act

Step 2: Testamentary Trusts [Secret and Semi-Secret Trusts]

Is there an indication of a trust on the will?

- No – Secret Trust
- Yes, words in will suggest property is to be held in trust – Semi Secret

Have the certainties been met?

Courts will enforce secret or semi-secret trusts where three conditions are met.

- Communication by the donor of the trust and its terms to the donee
 - Person to whom the property is given under the will
 - Who will be subject to the trust obligation
- Acceptance of the trust obligation by the donee
 - Acceptance
 - Acquiescence
 - Clear evidence of intention, communication and acceptance is required (**Boyes**)
- Communication must be timely
 - Secret trust: trust obligation may be communicated **any time before the death of the testator**
 - Semi-Secret: communication of the obligation must **be before** or **at the time** of the making of the will
- Cannot be contrary to public policy.

Secret Trust

A secret trust arises where the property is bequeathed to a person in a will with **no indications in the will** that the person is to hold that property in trust. The testator, before his death, communicated to that person an intention that the property is to be held on trust as described the person and the person has accepted the trust or acquiesced by not indicating a refusal.

Issues with Secret/Semi Secret Trusts

A person could keep the property and ignore the trust obligations. They were not written down, there was no indication of a trust obligation in the will. Courts in this case will not allow the person to ignore their promise because it would be **fraudulent** to retain the property.

Is it fraudulent?

Law: A fully secret trust is enforceable as an exception to requirements of the Will legislation where the trustee act fraudulently. A court will impose a “constructive trust” (**McCormick**)

It is fraudulent where:

- You may have induced gift to yourself because of your arrangement - the promise that you will distribute property
- Trustee accepted the trust obligation under the will – thus deterring the testator from making another will
- Trustee acquiesced knowing that the gift to him was to be held on trust – thus deterring the testator from making another will.
 - Consider the factors in McCormick for arguments

If not one of these circumstances, then there is NO exception to the Wills' legislation.

<i>McCormick v Grogan</i>	Facts: Will devised property to Grogan. Craig tells Grogan that he will find the will in a drawer with a letter. Letter asks Grogan to pay annuities to McCormick and others. Monies not paid to McCormick. McCormick sues.
	Ratio: A fully secret trust is enforceable as an exception where a person (a) induces the testator to give them property on a promise act as trustee (b) does not directly induce but agrees to act as a trustee or (c) person acquiesces their trustee obligations.
	Holding: Lord Hatherly holds for Grogan noting Grogan did not induce the will, did not assent (could not since Grogan did not know contents of letter), and could not acquiesce since testator said he would have it no other way
	Principle: Notes fraud concerns but says the facts here don't lend to it.
<i>Boyes v Carritt</i>	Facts: will left all to Carritt and the testator said he would communicate his intentions by letter that he would send after arrival on Continent, however no such letter sent in testator's lifetime. Letter was found among testator's papers after death. Action that Carritt held funds on trust for estate.
	Principle: Communication must be made in testator's lifetime. Not receiving letter until after death was not enough.

Semi-Secret Trust:

A semi-secret trust property is bequeathed to a person in a will and the will indicates that the person is to receive the property in trust. The objects of the trust are, however, not set out in the will. Before the testator executes the will, the testator gives instructions to the person who will receive the property, as to the nature of the trusts on which the property is to be held.

- Must be made before or at the time the will was executed
- Follow the three requirements above
- Communications of who the beneficiaries are is subject to the same time frame

<i>Blackwell v Blackwell</i>	Facts: testator altered his will by a codicil making specific bequest of £12,000 to trustees to invest and apply the income "for the purposes indicated by me to them." also gave a power to encroach on capital for "such person or persons indicated [to them] by me." Testator knew various degrees of the plan.
	Principle: the communication was made at the time of the execution of the will (good) and consequently the semi-secret trust was enforced.
<i>Jankowski v Pellek</i>	Principle: Communication of who the beneficiaries are must occur before or at the time of execution, otherwise semi-secret trust is invalid.

STEP 5: PUBLIC POLICY/ILLEGAL PURPOSE CONSTRAINTS ON EXPRESS TRUSTS

Sources of Public Policy

It is contrary to Public policy where a trust created for a purpose prohibited by

- Statute: CCC etc.
- Common Law: restraints on alienation rule against perpetuities.
- **State the General Law**

State the Law: trusts cannot be for an illegal purpose or contrary to public policy. Courts will not

support a contract that imposes an unacceptable cost or consequences on other persons. This unacceptable cost is often expressed as contrary to public policy.

A trust that created a contingent interest violating the remoteness of vesting rule of that is perpetual is contrary to public policy.

CONDITION TIMING CONSIDERATIONS: THAT MAY BE VOID FOR PUBLIC POLICY

- Condition Precedent: the condition must be satisfied before interest takes effect
- Effect: Contrary to public policy, **gift is void**.
- Effect: not possibly fulfilled at date of the gift – **free of condition**
 - Where it was **clearly intended** and became impossible **AFTER** trust created then the **gift fails**.
- **Uncertain: gift would be fails**.
- Condition Subsequent/Defeasible Interest: the interest will no longer be effective if the condition occurs
- Effect: contrary to public policy, the condition is **struck out** and the gift **operates without the condition**
- **Uncertain: gift becomes an absolute gift**.
- Gift which is limited in time: is a “determinable interest”:
- Effect: in this case, where it indicates an illegal purpose, then the interest be granted is **not valid** and the **gift fails**

QUESTIONS TO ASK

1. **Is the condition impossible to perform?**
2. **Is it a condition precedent?**
3. **Is the condition uncertain?**
4. **Is the condition contrary to public policy?**

HISTORICALLY CONDITIONS CONTRARY TO PUBLIC POLICY

- **Restraint on Marriage**
 - Lifetime celibacy
 - Restraint on ability to remarry (**Cutter**)

Restraint of Marriage	<i>Re McBain (1915 On HC)</i>	Gift to two daughters, with gift over if daughters should marry. Not contrary b/c just intended to provide for daughters until married . [intention]
	<i>Re Cutter (1916 ONCA)</i>	Estate to sister for life, but with gift over “in the event of the remarriage” Intended to impose a restraint on marriage and therefore contrary to public policy.

- **Interference with Marital Relationship**
 - Encouraging the separation of married couples
 - Discourages separated couples from getting back together
 - Do not marry “x” type of person (**Hurshman**)
 - Encouraging people get back together (**Blanchard**)

Interference with Marital Relationships	<i>Re Hurshman (1956 BCSC)</i>	Personal property on condition that daughter not be married to Jewish person. Daughter already married to Jewish person. Contrary to public policy.
	<i>Re Nurse (1921 On HC)</i>	Property to daughter, to divest if daughter helped or lived with her husband (whom she was separated from). Contrary to public policy—void condition.

	<i>Re Blanchard</i> (1963 PEI CA)	Real property and personal property gift to housekeeper, with condition subsequent if housekeeper got back together with husband. Contrary to public policy, void.
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□ **Interference with Discharge of Parental Duties**

- "if you reside with your parents" (**Darraugh**)
- don't live with certain parent (**Throne**)

Interference with Discharge of Parental Duties	<i>Darraugh</i> (1884 On)	Gift to infant on condition that gift void if child lived with father at anytime before it reached age of majority. Contrary to public policy
	<i>Re Thorne</i>	Gift of \$800 to minor living with Uncle, "this, however, is in case she does not go to live with her mother". Contrary to public policy

□ **Discriminatory Conditions**

- Deny person based on religion or race (**Drummond**)

Discriminatory Conditions	<i>Christie</i> (1940 SCC)	Not contrary to public policy to deny someone service based on race.
	<i>Drummond</i> (1945 On HC)	Condition prohibiting sale of property to Jewish persons contrary to public policy
	<i>Noble v. Alley</i> (1949 ONCA)	Prohibited sale of property to Jewish, Hebrew, Semitic, Negro or coloured race NOT contrary to public policy, and principles of public policy should NOT extend by reference to principles and obligations set forth in international covenants or charters, until they are made part of the law of Canada.
	<i>Leonard Foundation</i> (1990 ONCA)	Trust that provided scholarships for white, Anglo-Saxon protestant students, with restricted scholarships for women, contrary to public policy. Noted that international conventions made part of the law in Canada through Charter and Human Rights Codes.

□ **Restraints on Alienation**

- "can only sell property to family"
- interfere or restrict employment of the property
- invalid to prevent sole beneficiary from terminating the trust and calling for the property
- void to interfere with transfer of estates

□ **Adherence to Religion**

Not generally contrary to public policy however it may be "uncertain".

- Contrary where "to remain in one of the main stream Christian churches"

Adherence to Religion	<i>Leonard foundation</i>	Perhaps example of adherence to a particular religion being contrary to public policy. But here trust also restricted scholarship candidates to white students, and also restricted women, so that was more likely the reason and not the having to be a protestant part.	
	<i>Murley</i> (1995 Nfld. TD)	Condition to "remain in one or the other main stream Christian Churches" held contrary to public policy.	But this case did not cite any precedent for this principle.
	<i>Re Ramsden</i> (1996 PEI TD)	Trust fund for scholarships for protestant students not contrary to public policy.	Distinguishes Leonard on basis that there was racism and sexism as well...
	<i>University of Victoria Foundation</i>	Trust for provision of bursaries for Roman Catholic Students upheld "restricting class of recipients of a particular religious faith does not offend public	Distinguishes Leonard b/c that was "clearly offensive"

		policy"	
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RULES AGAINST PERPETUITIES: MAKE A TRUST VOID

Step 1: Are there lives in being?

- Yes – apply the modern rule
- No – apply the perpetual duration rule (below)

Wait, consider this - Step 2: Is there a life interest to an unborn person with the remainder to another unborn person?

- Yes – Apply Whitby v Mitchell rule (see below)
- No - continue

REMOVEDNESS OF VESTING RULE: MODERN RULE via COMMON LAW

The modern rule is the rule against remoteness of vesting,

The remoteness of vesting rule is: “an interest must vest, if it is going to vest at all, within a period calculated by taking the lives in being, at the date the instrument takes effect, plus 21 years” BUT:

- It only applies to **contingent interest** [yet to vest because something may or may not happen before interest arises] **NOT** vested interests
- Must vest **WITHIN** the perpetuity period
 - The mere *possibility* that it might vest outside the period violates the rule (**Lucas**)
 - if it possible to exercise discretion outside the period – Void (**Robinson**)
 - if an interest of any member of a class *could* vest outside – void
 - subject to the “class-closing” rule ** below.
- Does not prevent parties to a contract from enforcing contractual obligations
- Does not apply to **interests in reversion**
- Does not apply to rights of re-entry arising due to a determinable interest that has been determined; and
- In BC is modified by the Perpetuity Act

This rule allows an owner of property to create contingent interests in property that may not be determined for a period of time but also puts a constraint on the period of time by limiting the time to lives in being plus 21.

RULES AGAINST PERPETUAL DURATION

Where there are no lives against which to measure the perpetuity period, the period is 21 years. This is commonly the case for valid non-charitable purpose trusts.

THE RULE IN WHITBY v MITCHELL

The rule invalidates a gift that involves a life interest to an unborn person followed by a remainder to the issue of an unborn person with the life interest.

LEGISLATIVE MODIFICATIONS: SAVING PROVISIONS to SUPPLEMENT COMMON LAW

- S. 14: there is a presumption that women can't have children after 55. Men can bring evidence of infertility
- Result: may save the gift. Would know that when a woman turns 55 that she won't have another child, therefore doesn't create the possibility
- S. 8: where the gift only *possibly* vests outside the perpetuity period, the legislation could save it. See s. 9

S. 9: the gift remains valid until actual events establish that it cannot take effect within the period.
 S.11: where a gift is made contingent on a person reaching an age older than 21 then the court may reduce the age to 21 to save it
 S. 12: Provides that if a gift vests in some members of a class within the perpetuity period but does not vest in other members, then those whose interest might vest outside the period are cut off.
 S. 13: when all other saving provisions have failed, the court may vary the given to make it fit within the perpetuity rule in a way that fits *the general intention of the donor*.
 S. 7: Alternatively, if it is clear that the gift must vest within 80 years from the date that the trust is created, just use that as the perpetuity period.

Steps to Applying the Modern Rule/Answer a Perpetuity Issue

- ❑ Is the interest contingent? Yes – move on
- ❑ What are the relevant lives in being referred to in an instrument? [those with *some connection* to the grant]
- ❑ Is there a possibility that an interest will vest outside the perpetuity period?
- ❑ Even if it he interest complies with the modern rule, does it violate the rule in *Whitby v Mitchell*?
- ❑ How do the legislative modifications affect the application of the common law rule?

RULE AGAINST ACCUMULATION

Rule Against Accumulation	Accumulations Act UK 1800	Prohibits allowing income in trust to accumulate for full perpetuity period.	Repealed everywhere but ON
	Accumulation Act ON	Six possible periods of accumulation: <ol style="list-style-type: none"> 1. Inter vivos trust: life of the grantor 2. 21 years from the date of making an inter vivos disposition 3. The duration of the minorities of persons living or conceived at the date of making an inter vivos disposition 4. 21 years years from the death of the grantor, settlor or testator. 5. Duration of the minorities of any persons living or conceived at the death of the grantor, settlor or testator. 6. Duration of the minorities of persons who, under the instrument directing the accumulations, would if of full age, be entitled to the income directed to be accumulated. 	Direction to accumulate beyond this period is “null and void” Income that was to be accumulated pursuant to the trust beyond the permitted periods is to go to the person who would have been entitled to the income if there had been so such provision in the trust for accumulation of income beyond the permitted period.
	<i>McIntyre</i> 1997 On Gen Div	Fund held on trust to provide monthly allowance for sister for life with power of encroachment. Residue of trust to be divided between charities. Also provision saying any legacy not valid was to go to residue as well. Fund with encroachments more than needed for sister, accumulation occurs.. 21 years from death of testator, sister still alive.	Held: the amount in excess of the accumulation period (i.e. so accumulation occurring after 21 years of testator's death) was NOT failed legacy b/c testator didn't deal with it. Therefore, next of kin intestacy entitled to it.

Application of Facts [see chart below]

- **STEP 1: State whether there is anything that is/is not contrary to public policy**
nothing here suggests the trust would be for an illegal purpose or contrary to public policy (such as discriminatory, restraint of marriage, restraint on alienation, or vesting too remotely)
- **STEP 2: Conditions Acknowledge**
 - Type of condition (precedent, subsequent, words of limitation)
 - Type of interest (determinable, defeasible)
 - Whether uncertain
 - Result of the above considerations
- **STEP 3: Look at Perpetuity Rules to see if it violates them**
 - Non charitable purpose trusts are an exception to the rule of perpetuities.
- **STEP 4: Does Rule Against Accumulation Apply?**

CONSEQUENCES of ILLEGALITY

**** see page 18 of long outline.**

Outcome Chart

STEP ONE: Condition OR Determinable Interest?

Condition	Determinable Interest
Continue to step two.	STOP: If it is contrary to public policy OR uncertain, gift is VOID If not contrary to public policy and NOT uncertain, gift is valid and subject to the limitation.

STEP TWO: Precedent or Subsequent?

Precedent	Subsequent
Continue to Step Three	STOP: If it is contrary to public policy or uncertain—condition is struck out, gift effective w/o condition If it is NOT contrary to public policy and NOT uncertain—gift is valid and subject to divestment if the condition occurs.

STEP THREE: For Real or Personal Property?

Personal Property	Real Property
Continue to Step Four	STOP: If it is contrary to public policy or uncertain—condition is void and the gift fails If NOT contrary to public policy and NOT uncertain—gift is valid if/when the condition is met.

STEP FOUR: is the condition certain or uncertain?

Certain	Uncertain
Continue to Step Five	Condition is void and the gift fails.

STEP FIVE: is the condition contrary to public policy? [historical reason or perpetuities]

Yes	No
Continue to Step Six	Gift is valid if the condition is met

STEP SIX: is the condition *malum in se* or *malum prohibitum*?

<i>Malum in se</i>	<i>Malum prohibitum</i>
Condition is void and the gift fails	Condition is struck out, the gift is effective w/o the condition.

VALID EXPRESS TRUSTS FOR PURPOSES

Requires same elements for creation as express trust for persons:

- ❑ Capacity
- ❑ Three Certainties
 - Certainty of Objects: certainty of purposes
 - For non-charitable: purposes must be sufficiently certain that one can assess whether any given act of the trustee is consistent with that purpose
 - For charitable: there must be an exclusive charitable intent to satisfy certainty of objects
- ❑ Constitution
- ❑ Formal Requirements
- ❑ Public Policy

OVERRIDING THE TRUST INSTRUMENT

The terms of a trust instrument can be overridden or varied in four ways:

- ❑ the trust can be terminated before its full implementation under the terms of the trust instrument
- ❑ the trust can be terminated before its fully implementation under the rule in *Saunders v Vautier*
- ❑ the trust can be varied by applications to a court for the variation of the trust pursuant to a statutory power given to a court
- ❑ A charitable purpose trust can be varied by a court ordered administrative or *Cy pres* scheme

A. TERMINATION UNDER THE TERMS OF THE TRUST INSTRUMENT

- ❑ Use terms of trust, through a power of revocation.
 - If the settlor wants to be able to revoke the trust, the right to do so must be expressly reserved in the trust instrument.
 - It is a rare power to reserve a right of revocation for tax reasons. The right of revocation results in the income of the property being taxed in the hands of the settlor.
- ❑ Trust could have run its course (i.e. trustee has carried out all the terms—life interest and then remainder to person, when life holder dies, trust has run its course and it is split up for remainder people)
- ❑ May provide for termination by adopting s.7 perpetuity act 80 year period from date of creation.

B. THE RULE IN SAUNDERS v VAUTIER

The rule comes from **Buschae**, “If there is only one beneficiary, or if there are several (whether entitled concurrently or successively) and they are all of one mind, and he or they are not under any disability, the specific performance of the trust may be arrested, and the trust modified or extinguished by him or them without reference to the wishes of the settlor or trustees.”

Rule has three key elements:

- ❑ Beneficiaries have full legal capacity (adult, sound mind—can appreciate nature and effect of winding up trust)
- ❑ Persons applying to wind up must have the full beneficial interest in the trust, anyone with a contingent interest must also agree to winding up.
- ❑ All beneficiaries have to agree to the winding up.

When will this rule apply?

- ❑ Single Adult Beneficiary of Sound Mind
- ❑ Several Adult Beneficiaries of Sound Mind with Concurrent Interests
 - fund of 80,000\$ held in trust for four specifically named children of the settlor and the terms require income to be accumulated, total amount divided equally among children when youngest turns 25
 - When youngest reaches majority (19), all four can agree to call for the trust.
- ❑ Several Adult Beneficiaries of Sound Mind with Successive Interests
- ❑ Postponement to a Future Date
 - Testamentary trust that provides for a life interest to a surviving spouse with remainder testator's children *five years after* the death of the surviving spouse
- ❑ Instalment Gifts
 - Ex trust calls for the payment of 5,000\$ per month to A for life, with capital to A's estate on their death. A can have trust wound up and capital distributed to him if he is of sound mind and has reached the age of majority.
- ❑ Discretionary Trusts and Powers
 - Rule can apply even where trustees have discretion as to distribution of income or capital.
- ❑ Life Interest with general Power of Appointment of the Remainder

How to Avoid the Rule:

- ❑ Place Contingent Interest in a Person Who Will Refuse Consent
- ❑ Place Interest or Contingent Interest in a Minor or Unborn Person
 - If you do this it works better b/c person must be age of majority to consent under the rule.
- ❑ Place Discretion to Distribute Among a Class with Some Members of the Class Being Difficult to Ascertain
 - If you don't know who they are, can't get them all to agree
 - OR make it so the discretion to pay out could include ability not to pay at all, add a gift over amount for any unpaid to unborn or minor beneficiary

3. STATUTORY POWER TO VARY TRUSTS

Even where *Saunders v Vautier* does not apply the trust terms may still be varied under provincial legislation that allows for variation.

Issue	Where	Ratio	Notes
What power exists in BC?	s. 1 Trust and settlement Variation Act	Allows the supreme court to approve a proposed revocation or variation of a trust if it thinks fit on behalf of particular types of persons .	
Notice	s. 3 TSVA	If court is asked to give consent on behalf of minor or unborn person, or person lacking capacity, notice in writing of the application must be given to PGT	
Persons on	s. 1 (a)	Minors/ those who Lack Legal capacity—whether interest	

whose behalf the court can consent	TSVA	vested or contingent	
	s. 1 (b) TSVA	Persons of specified description or class- whether ascertained or not—who may become entitled at a future date or on happening of future event.	<ul style="list-style-type: none"> Ex “to Adam and his then wife if he is alive and married”—‘then wife’ is a person of specified description. Person may not yet be ascertained. Even if adam does marry, could divorce and get new wife. Ex. property on trust for “for life, remainder to her statutory next of kin”. Depends on who survives F. If F has a son, would go to him if her survives. If he does not, would go to cousins. Court CANNOT consent on behalf of son if he is legal age and has capacity. Could consent if not of age/no legal capacity. However cousins, may not be readily traceable, although may be ascertained. B/c interest is contingent, could consent for cousins regardless of ascertainability or capacity.
	Knocker v. Youle	Provision does not apply to persons having either vested OR contingent interests.	<ul style="list-style-type: none"> Seems to suggest the provision has NO application.
	Harris, Variation of Trusts	Suggests that this provision doesn't allow consent on behalf of those whose interest depends on SINGLE contingency, but does allow where interest depends on two or more contingencies.	
	Bentall Corp	The court gave consent on behalf of seven out of two hundred and ninety seven members of a pension plan, even though those beneficiaries had contingent interests and were ascertainable.	<ul style="list-style-type: none"> Did not refer to Knocker Similar thing happened in Continental Lime Ltd. where one of ninety-nine members opposed variation of pension trust.
	Bushchau BCCA – rev'd on other grounds	Legislation does not permit a court to consent on behalf of a fully capacitated and ascertained beneficiary, even if his or her interest is a contingent one.	<ul style="list-style-type: none"> Didn't follow earlier decisions of Bentall and Continental Line SCC rev'd on basis that termination of a pension trust was subject to Pension Benefits Standards Act Scope of (b) in doubt.
	BCLI	Recommends that legislation should clearly state that the court be given discretion o consent on behalf of ascertainable beneficiary of full capacity where a “substantial majority” of the beneficiaries approves of the variation, and the variation would not be detrimental to the objective ascertainable beneficiary of full capacity.	<ul style="list-style-type: none"> However until this happens, seems that (b) allows the court to consent where an interest is subject to more than one contingency... This interpretation leaves scope to the provision.
	s. 1(c) TSVA	Court can consent on behalf of unborn persons.	
	s. 1(d) TSVA	Consent on behalf of person who may obtain an interest in the trust by reason of the exercise of a discretionary power given to someone where the discretionary power can only be exercised on the failure or	<ul style="list-style-type: none"> Ex. trust to be distributed to Peter at 21, but if Peter dies before that age, then trustee to make gift at their discretion to one or more of A, B, C or D If peter is still alive at time of application, court could consent on behalf

		determination of an existing interest that has yet to fail or be determined.	of A, b, C, or D. ▪ Appears to be so even if A, B, C or D are alive and have legal capacity
When should power be exercised?	s.2 TSVA	Must NOT give consent for ppl in paras. (a) – (c) unless it “appears to be for the benefit of that person”	
	Finnell	<ul style="list-style-type: none"> ▪ Here not granted b/c only <i>potential</i> benefit for unborn beneficiaries... not sufficient. ▪ Complicated trust w mining rights, wanted to have them treated as income and not capital for tax savings, but that would have reduced capital for future beneficiaries who were entitled to capital. 	
	Re Kovish	<p>One does not have to show that each individual beneficiary on whose behalf the court is being asked to consent is bound to be better off. Just show the bargain being made is a reasonable one that an adult would be prepared to make.</p> <p>Benefit is not confined to financial benefits</p>	<ul style="list-style-type: none"> ▪ Variation of trust, which provided for remainder to be split between grandchildren and great-grandchildren ▪ Grandchildren and life interest holder (daughter) wanted to start business—termination to get money to start it. ▪ Court held unborn great-grandchildren would benefit, b/c their parents would benefit by having the business. ▪ Termination granted.
	Smith v. Smith Estate BC	<p>Only 3rd test from Irving needs to be considered.</p> <p>Is the benefit obtained on behalf of those for whom the court is acting such that a prudent adult motivated by intelligent self-interest and sustained consideration of the expectancies and risks and the proposal made, would be likely to accept?</p> <p>Non-financial benefits ALONE sufficient</p> <p>Here: “achieving family harmony” were sufficient for variation to be given.</p>	<ul style="list-style-type: none"> ▪ Grandpa has life interest, wants to add his wife ▪ Minor grandchildren have remainder interest. They want to help out grandma. ▪

D. CY-PRES SCHEME **See above – Charitable purpose trusts

POWERS OF TRUSTEES

Introduction

Duty: an obligation to act where a failure to comply may lead to a remedy

Power: permission to do something but no obligation to act.

Overlap: a trustee may have a duty to exercise a power (trust power)

Types of Powers

- Mere power: a trustee has a power but no duty to exercise it
- Fiduciary power: held in a fiduciary capacity. You must at least consider the exercise of the power.
 - Power to accumulate, power to select or determine amounts of distributions with no duty to exercise the power
- Trust power: where a trustee has a duty to exercise the power
 - Duty to invest with power to choose investments
 - Duty to select or determine amounts of distribution
 - others

How Can you Tell?

Depends on interpretation of the terms of the trust. Can be inferred from words or circumstances. May come from words used together with the circumstances. If there is an ambiguity in written doc, use circumstances to resolve.

Why Does it Matter?

Court will intervene to force trustees to perform a duty, but will not do so to force trustees to exercise power in certain way, unless discretion under power has been exercised improperly. **(Tempest)**

What is an Improper Use of Power (Tempest)

- inconsistent with the terms of the power itself
- in a way that breaches an underlying duty of loyalty, care or impartiality

Administrative Powers

- allow the trustee to manage the trust property
 - sell trust property
 - postpone sale of trust property
 - lease real property
 - renew a lease
 - grant an option to purchase
 - repair or make improvements

Dispositive Powers

- deal with the distribution of income or capital to trust beneficiaries
 - power of selection
 - power to determine amounts of distributions
 - power to accumulate income
 - power to encroach on capital
 - power of advancement

Express and Implied Powers

- implied: courts fill in blanks

Statutory Default Powers

- trustee acts codified many implied powers

Presumption of Unanimity

- Trustees, whether exercising power or carrying out a duty, must act unanimously (**Gibb**)

Investment Powers

- Underlying duties apply while making investments, with modifications to duty to delegate and standard of care.
-

Types of Investments

- 15.1(2) of Trustee Act: The terms of the trust instrument can restrict the types of investments the trustees can make.
- S. 17.1 of Trustee Act: Only restriction on types of investment in the statute is that a corporate trustee cannot invest funds held by it in trust in its own securities.

Standard of Care

- 15.2: Standard of care in investing: "care, skill, diligence and judgment that a prudent investor would exercise in making investments"
- 15.3: If a particular investment was made as a result of a prudent portfolio investment strategy a trustee is not liable for loss on that particular investment
- 15.4: An assessment of loss on a particular investment may take into account gains on other investments

Delegation

- Permits delegation of Investment: (3) A trustee who delegates investment authority must exercise prudence in selecting the agent, establishing the terms of the authority delegated, and monitoring the performance of the agent to ensure compliance with the terms of the delegation.

Answering a Powers Question

Steps to take. Look at:

- trust instrument
- trustee act
- case law

Default Rule: Trust can specifically set out the powers a trustee is to have. There are a number of presumed powers that "fill in the gaps", called "implied powers" that apply as long as not overridden expressly or by implication in the trust instrument.

Court Intervention in the Exercise of Power

Who Can Apply (Pitt)

- trustee acting out of scope: trustee or beneficiary can apply
- trustee acting within scope, but have in some other way breached their fiduciary duties in respect to the exercise of power: only beneficiary will be able to seek an order that it is voidable

When will the court intervene?

- A court will intervene in the exercise of a power by a trustee when the trustee has exercised the power in a way that is not within an expressed limit on the scope of a power.
- A court will only intervene in the exercise of power that gives absolute discretion where there is *mala fides* (**Gisborne**). *Mala fides*, however, does not mean the trustee must be shown to have committed the fraud in the common law sense and it also does not mean the trustee must be shown to have been dishonest (*Fox Estate*; *Re Blow*)
- A court may intervene in the exercise of power by trustees where the trustees have failed to consider the exercise of power (*Re Blow*). Reliance on a letter of wishes as a basis for not exercising a power may be considered a failure to consider the exercise of power where a letter of wishes has no legally binding effect and therefore purported constraints on a power in such a letter are not binding on the trustee (*Re Blow*)
- A court may intervene in an exercise of a discretion by trustees where the trustee takes into account considerations they should not have taken into account (*Fox Estate*)
- A court may intervene in an exercise of discretion by trustees if the trustees fail to take into account things they should have taken into account (per Galigan J. in *Fox Estate*)
- A court will not exercise a power for a trustee—the trustee(s) must exercise it themselves (*Re Wright*)
- Where there is a deadlock between trustees the question will be whether the failure to exercise the discretion is consistent with or frustrates the settlor's intention. If it frustrates, the court must determine on whose side to intervene considering the interests of the beneficiaries (**Kordyban**)

Case Examples

Case Examples	<i>Gisborne</i>	"uncontrollable authority" to make provision for WM's wife during her life, remainder in part to X who was also a trustee. Trustees refused to make provision for wife b/c she had enough money. Court refused to intervene.
	<i>Fox</i>	mother exercised discretion as trustee to give capital all to grandchildren, effectively cutting son out of trust b/c he married a non-jew. Held: 1 judge = discriminatory and therefore <i>malafides</i> 1 judge = obiter should not have taken into account 1 judge = obiter should not have taken into account
	<i>Re Blow</i>	Brother and trust company trustee of trust where beneficiary is sister. Trust provided discretion to encroach on capital. Brother supported advancement of capital, but company denied based on letter of wishes of settlor (WM). Held: letter of wishes does not constrain discretion, only for guidance (precatory in nature). Court decided to remove company as trustee, saying as in <i>Consiglio</i> this was situation where disagreement would make future administration impossible. BUT did not say how discretion should be exercised (although presumably with only son left it would be done).
	<i>Re Wright</i>	Half the assets of the trust consisted of shares in a certain company. Trustees agree to sell shares but could not agree on whether they should accept a particular offer. One of trustees brought an application for advice and directions as to whether the power to sell should be exercise by accepting a particular offer. Held: power, not duty to sell the shares. So court wouldn't say that trustees had to accept offer due to duty. Court refused to intervene, responsibility is the trustees and cannot shift the responsibility to decide to the court.
	<i>Kordyban</i>	Shares of corp divided 60/40 in trust for son and daughter. Daughter is removed as director of corp, wants to be reinstated by voting the trust shares to appoint her director. Daughter and son are both trustees, and son refuses to exercise shares in this way—trust requires unanimity of trustees. Daughter seeks court to break deadlock in her favour.

		Held: Not intention of settlor (WM) for daughter to be director. To appoint daughter would be inconsistent with will setting up majority control in a certain way. Also, trustee did not have to be director in order to carry out the trust. Other beneficiaries were opposed to her becoming a director. Thus, court sided with son and refused to force trustees to exercise discretion in favour of voting daughter in as director.
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DUTIES OF TRUSTEES

What are the Duties?

- ☐ Duty of care
- ☐ Duty not to delegate
- ☐ Duty of impartiality
- ☐ Duty to provide information
- ☐ duty to carry out the terms of the trust

What Standard of Care are they subject to?

- ☐ Absolute: no defence to say trustee acted with reasonable care. If trustee fails to perform it, they are liable.
- ☐ Not Absolute: then subject to a standard of reasonable care.

Standard of Care

- ☐ Standard for trustee is "that of a person of ordinary prudent in managing his or her own affairs" **(Fales)**
- ☐ No distinction is made between trustees of different types (i.e. paid or not paid, professional, has expertise) **(Fales)**
- ☐ Each trustee responsible for a breach whether active or passive in the breach, but can relieve individual trustees under s. 96 and therefore make the other pay all **(False)**
- ☐ Trustees holding themselves out as experts are subject to a higher standard, that of a person with the professed expertise **(Barlett)**

Considering Granting Relief from Liability (s. 96 of TA)

- ☐ Was trustee paid
- ☐ Was trustee friend or rather a trust company chosen for its expertise
- ☐ Was breach technical or minor
- ☐ Was cause of loss due to general economic conditions
- ☐ Was trustee's actions reasonable

Duty Note to Delegate

General Rule: trustees have a duty not to delegate the tasks required to execute the trust they have accepted

What are the Case Law Exceptions?

- ☐ Trustees may delegate a task where persons acting with reasonable care for their own purposes would, in the particular circumstances, delegate the task. Or if agent used for "moral necessity" **(Speight)**

What are the Statutory Exceptions?

- S. 7(1) TA: Trustee may appoint solicitor to receive and give a discharge for money, valuable consideration or property receivable by trustee.
- S. 7(2): Trustee may appoint banker or solicitor to receive and give discharge for money payable to the trustee under a policy of insurance.
- S. 7(5): Statutory powers to engage an agent can be overridden by express terms of the trust

What Needs to be Considered When They DO Delegate?

Must do so prudently:

- Select the agent;
- The matter the agent is selected to deal with must be within the agent's area of expertise; and
- The agent's activity must be supervised with reasonable care.

Liability of Trustees for the Acts of Other Agents

- S. 95 TA: Trustees are not liable for the acts of agents or other trustees unless the loss occurs as a result of the trustee's own "wilful default."
- This provision "does not substantially alter the law" meaning that if trustee complies with CL duties when delegating, they are not liable, and if they do not, they are in 'wilful default' **Re Brier UK**
- "wilful default" includes ordinary negligence **Underwood UK**
- wilful default" means "a consciousness of negligence or breach of duty, or recklessness in performance of duty"... so ordinary negligence will not suffice. Need something more. **Re Vickery**

Duty of Impartiality

General Rule (Smith)

- Trustee must treat all the beneficiaries fairly and not favour any one or more beneficiaries over others.
- Settle can waive or vary, implicitly varied where settlor allows trustee to encroach on capital for maintenance of life holder, or unfettered discretion to use all funds for benefit of life interest holder. Comes at expense of remainder interest, but specifically authorized by instrument.

A. Trusts for Sale

- trustee may be under duty to sell assets settled on the trust (sometimes referred to as a "trust for sale") and invest the proceeds for the benefit of series of successive interests
- duty may be express or implied

I. Implied Trusts for Sale (Howe)

- when an implied trust for sale arises – it has no application where the settlor has expressly or impliedly provided that the particular property be retained
 - 1. trust for sale may be implied where assets are producing little or no income to disadvantage of persons with life interests
 - 2. trust for sale may be implied where assets are producing significant income but assets are deteriorating in value ("wasting assets") or value of

assets subject to substantial risk ("hazardous assets") – this would be to disadvantage of beneficiaries with remainder interests relative to beneficiaries with life interests

- "hazardous assets" – asset one in which the risk of loss of capital is high
- NO implied trust for sale of real property (**Lottman**)
- NO implied trust for sale where trust property came from a specific bequest in a Will

II. Apportionment of Sale Proceeds

- Apportion the proceeds of the sale between the beneficiaries entitled to the income of the trust and the beneficiaries entitled to the capital (**Howe**)

III. Apportionment of Sale Proceeds under Chesterfields Trusts

- courts developed apportionment rules to apportion income or capital between the beneficiaries in period prior to sale – rules are based on the reasons given in **Re Earl of Chesterfield's Trusts**
 - Life tenant is not entitled to the income from the property but rather is entitled to a notional income calculated as percentage of the value of the assets to be converted.
 - Date of assessment of the value of the assets to be converted for *inter vivos* trusts is the date of creation of the trust
 - Date of assessment of the value of the assets to be converted for testamentary trust is one year after the date of death, unless trust contains a discretion to postpone sale in which case the date of assessment is the date of death of the WM
 - For a wasting asset, assess the value at the relevant date and then pay an amount to the beneficiaries entitled to income on the basis of a "reasonable rate" applied to the assessed value.
 - If asset is one that produces little or no income, portion of the proceeds of sale when the sale is made needs to be allocated to income for the beneficiaries entitled to income. Calculate the amount that would have to have been invested at a reasonable rate at the relevant date that would have produced the actual proceeds of sale. That amount is allocated to capital and the excess is allocated to income.
 - Reasonable rates are usually between 4% and 8%

B. *Corporate Distributions to Share Holders*

I. General Rule

- Default rule is that dividends on shares are income, and increases in share price are capital.
- Form rule—distribution takes whatever form the corporation chooses. If it is through dividend it is income. If distributed as shares then it is capital to the trust
- Unless earnings actually or constructively pass from the company to the shareholder there is capitalization, meaning treat that as capital (**Water**)

Duty of Loyalty

General Rule

Trustees owe a duty of loyalty:

- Administer a trust in best interests for the beneficiaries
- Avoid conflicts of interests

Strict Approach

- No defence to claim trustee acted entirely honestly, transaction will be set aside even if it was merely possible the trustee would benefit.

Keech	A person who had a lease of the profits of a market assigned the lease to trustee who acquired the assignment of the lease as an investment for a trust the beneficiary of which was a minor. Lessor refuses to renew lease for trust, so trustee goes and takes the lease themselves. Conflict of interest.
Ex Parte James	Solicitor acted for creditors of bankrupt person. Creditors had obtained title to land owned by the bankrupt. Agreed to put it to auction for minimum of \$10,000. Solicitor recommended \$10,500 but was overruled. Solicitor bought land (highest bid, \$12,030). Conflict of interest, even though circumstances honest.

Less Strict Approach

- Court took a less strict approach and looked to whether what the trustee did was **reasonable** in the circumstances. **(Tornroos)**

Varying Duty

- Normally presumed to be part of what trustee is accepting when they accept the obligation. But can be expressly or impliedly varied by the terms or the trust or circumstances in which the trust arose.

INTRO TO NOTICES & POWER/RIGHTS

Now we have proved that everyone in fee simple is in fact in a land trust because of failure to terminate the land settlement agreement. Trust law within English law differs greatly from contracts, within trust there are temporary powers granted by another, these powers are based on a grant of another when the grant is terminated the powers also terminate, yet with trusts as we can see the power is in the thing and being in the right capacity with a valuable consideration to the thing in trust, in English law this translates into settlor and special procedures **(SP)**.

It is important to always deal with each aspect of an agreement, with trusts and powers granted to another in trust have different requirements for the different trust. This applies for notices and many other aspects of trust law, within English trust law the notice is the only document used in court, the notice is what is determined, to get remedy against a trustee of a trust, the notice is the information the trustee must consider, one must give the required information for the determination of that trust to

have the powers and duties of that trust returned. The notices must give constructive information, enough information where if a 3rd party that knows nothing of the agreements is given that notice, the 3rd party has enough information to make the full determination required, one of these 3rd parties might be a judge in a petition for determination, with a complete notice all that is required for an order, determine the notice, then and order for the trustee to do as the notices state.

Due to the specifics within these areas of English law, to assist have included in this introduction, a treatise on both powers and notices that will help get the foundation rules to this exact issue in an exact capacity to the exact thing in trust.

As you are noticing the words used, the laws used, how they are used are very exact, by using the wrong agreement makes you in the wrong capacity, when one can only be in one capacity at one time, deforcement must be permanent and show justified intent not only in your actions today, but yesterday. If you have shown a different intent in the past out of ignorance, one must show how one was ignorant, explain how one WAS ignorant, justify you are no longer ignorant and why those reasons will no longer be reasons baring you from your true capacity and ability to be absolute owner of lands not part of a group.

Supporting Documents for this chapter:

□ 17 A. A Treatise on Powers

With Supplement Bringing the New Enactments and Cases Down to 1841

□ 17 B. A treatise on the law of notice
as affecting civil rights and remedies

THE PROOF

NOTICE TO GOVERNMENT

**** THIS NOTICE IS FOR DEMONSTRATION PURPOSES WHEN YOU FULLY
UNDERSTAND ALL ASPECTS THAT MAKE UP THIS NOTICE YOU WILL HAVE THE
ABILITY****

Lieutenant Governor of State/Prov(seal holder)

1535 Statute of Uses Avenue (27.H.8.ch 6)

City, Prov

Postal Code

Attorney General of State/Prov

1688 Bill of Rights Avenue

City, Prov

Postal Code

ATTENTION:

**Lieutenant Governor of State/Prov &
Attorney General of State/Prov
Cover Letter**

Settlor to Settled lands Act 1925 sec 16 & 17

This cover letter is to inform you of the changes to the statutory trust created at birth, also to give a brief summary of the documents attached. As you were made aware from past correspondence, I am revoking the cestui que trust created at birth, that I am the settlor of the lands and rights in trust, and to inform you that I never intended to create any trust of lands or to become a municipal subject and acting as cestui que use. Settlor Name is the settlor and no longer acting in right of another as a corporate person/citizen/cestui que use/agent/trustee.

The documents that are attached should supply you with the necessary information needed to determine the trust that I Settlor Name is settlor and absolutely entitled to the corpus of the trust including the lands, as well as to give you the authority and power to indemnify the trustees and terminate the trust in accordance with law and equity.

In order to simplify the complicated and exact procedure of revoking the cestui que trust and have it returned, it is addressed in sections. I have added a contents page to assist in making it easier to understand and to give the constructive notice required for each aspect of revoking the trust. I would like to bring to your attention that the common law deals with the actual contract in lands, while equity is used in the modern land tenure for acceptance, equity therefore being the trust and trustees of the hereditaments held in trust till returned to the rightful owner.

This will be my final attempt to supply the correct and necessary information that you are required to take into consideration in this matter before one files a petition to the court to determine why you will not act when given full notice of the trust, and if necessary an order to force you to comply with the trust.

Sincerely

Settlor Name

Settlor Signature: _____

Date: _____

Letter of Wishes

Letter of wishes

To the Trustees for time being of the Declaration made on: Date on live record (add footnote and attach)
Between (1) Settlor Name

And (2) Acting Trustee to the Settled Estates Act¹ Lieutenant Governor of State/Prov (In Right of Her Majesty the Queen²).

¹LAND (SETTLED ESTATE) ACT R.S.B.C. 1979 pg #1

²Mercer v. Attorney General for Ontario, 1881 CanLII 6 (SCC) pg

The Letter

**** Delete everything in Red at the top of each heading this is extra info to help write the letter of wishes*** This Letter is intended to explain the aims which you had in mind in setting up the Trust, your family background, other relevant circumstances and the principles which you think are relevant.*

The Declaration confers discretionary powers on you and I appreciate that I cannot fetter your discretion or determine the way in which you exercise your powers. In the hope that this may be of help to you in exercising your discretionary powers within the Declaration, but without imposing any that or other binding obligations on you or seeking to prevent you from acting as you think best in light of changing circumstances, I would ask you to have regard to my wishes expressed below.

Overall Aims:

Insert here what you believe is the main purpose of your Trust. For example, "To provide for my Children throughout their education." I Settlor Name settlor to the statutory trust wish to inform you of very important changes to my capacity and wishes concerning the statutory[land] trust created at birth called a "cestui que trust". I did not intend to create the cestui que trust at birth nor did I intend to create an express trust by taking possession of the trust and things within the trust used as the subject matter, as cestui que use. The creation of the trust itself was induced by mistake³, that I am of full age and entitled to require a legal estate in the settled land to be vested in myself Settlor Name in priority to the settlement, by reason of a statutory right of reverter as settlor with no intention to create the land trust created at birth, that my (Settlor Name) interest ought no longer to be capable of being over-reached under the powers of Settled Lands Act 1925, the estate owner shall be bound, if so requested in writing, to transfer or create such legal estate as may be required for giving legal effect to the rights of the person so entitled⁴; I am sure you should be aware of the existence of the statutory [land]trust along with the history of the cestui que trust and its effects in law and equity. Due to me now fully understanding the English law system of land tenures I find myself in a statutory trust agreement which i no longer consent to and wish to terminate it following the due process, As you are aware from the previous correspondence I have released all of the rights duties and actions real personal and mixed as acting cestui que use and no longer accept the agency⁵ (also included in to follow) to the municipal corporations, nor do I accept being seized of the absolute right of ownership and possession together (droit droit⁶) *legal⁷ & equitable⁸ titles* plus the right of ownership greater than fee simple..

The acceptance of the statutory trust would not have occurred if majority understood the truth to the cestui que use as fee-simple⁹, yet the undue influences of society, the institutional bias in regards to the cestui que trust and how one becomes subject to the juristic units is the main factor that makes creation of the land trust not my folly¹⁰ for accepting such a trust without understanding the trust and what was actually given at the time of birth or since.

The statutory trust creates a cestui que trust¹¹ at birth by the settled lands acts¹² in conjunction with the

3In The Matter of John Horvath, 2000 BCSC 117 pg #32

4Settled Land Act 1925 sec 16.1.ii

5Commentaries on the law of agency pg #

6Coke upon Littleton pg 19 #4.a

7Settled Lands Act 1925 sec 17

8Settled Lands Act 1925 sec 16

9Coke upon littleton pg 19 #4.b

10Coke upon Littleton pg 19 #4.c

11 Richard.III Ch1 Pg #5

12LAND (SETTLED ESTATE) ACT R.S.B.C. 1979 pg #1.d

infant act¹³, this trust is in place by tacit acceptance and must be refuted by the settlor in accordance with the conveyance¹⁴. English law is based on the common law land tenures, the uses and trusts being equity for those not acting in their own right and in right of a possession only, A USE to the hereditaments¹⁵ held in trust for another.

The statutory trust was in fact created without my knowledge or consent, yet this does not make a sham trust¹⁶, as I am sure you are aware as long as all parties act in accordance with the trust, it is in fact a valid trust¹⁷ yet how the trust vests is also very specific in law, when the settlor did not intend to create the trust¹⁸, the trust reverts back to the settlor, in the same way as the intended beneficiary would have received the trust by fulfilling the trust.

As you can see by the laws of descent and purchase and the time of history has allowed everyone in English law as equitable title holders within the uses and trusts jurisdiction with only a right of possession to hereditaments held in trust now believe they are the true absolute owners with both right of possession and ownership (legal & equitable titles to land), where no one as subject to English law have the capacity of the right of true ownership and only have the capacity in equity to be equitable owners with a single right of possession(A use for a fee) only.

Only the right of ownership combined with possession (droit doit) gives the right to the lands held in trust.

it is the trust and being an equitable subject by fee-simple that makes one have to pay a fee with only a right of possession of the hereditaments that are in fact held in trust till the cestui que use stops accepting those benefits and chooses to self determine, this requires the individual to be out of possession, ownership and the fee absolutely entitled in a permanent manner¹⁹, as settlor being the only class of persons that has given valuable consideration, along with the proof of deforcement, this is the actions of the individual's choice not to give a gift, and is in fact a change of capacity and jurisdictions in law and equity, moving out of possession only as cestui que use and vest the right of reversion, with interests in remainder to revoke the trust created to have the right of possession returned by those that are in possession²⁰ of the trust corpus that only have a right of possession in fee simple, with full notice of the trust by the law of property²¹ and the fact of being in fee-simple with only a right of possession proves that fact.

Due to the monarchy granting the power to the judges of the settled lands and strict land settlements via letters patent, the right of ownership is held within the land tenure, the judges are the only ones that can correct the title of possession by fee-simple into absolute entitled as droit droit²², right of possession, ownership and the fee and no longer part of the system of land tenures.

This brings us to the issue of myself being the settlor/donor of the cestui que trust, as the previous notices as beneficiary have not been addressed in any manner or form, is the reason for establishing the required letter of wishes as settlor to inform you of these very important issues that have gone unanswered.

As being in your capacity and the required knowledge I assumed you understood default trust law along

13Infants Act, RSBC 1996, c 223 pg #6

14Settled Lands Act 1925 sec 106 & Settled Estates Act 1886 ch 43 pg #7

15PRINCIPLES OF THE LAW OF REAL PROPERTY #8

16Mordo v. Nitting et al, 2006 BCSC 1761 pg #9

17Mordo v. Nitting et al, 2006 BCSC 1761 pg #9

18REPORT ON THE LAND (SETTLED ESTATE) ACT pg #10

19Blackstone Commentaries Vol 3 pg #11.

20Settled Lands Act 1925 sec 16 ***Note important 16.7***

21Property Law Act [RSBC 1996] page #12

22Settled Lands Act 1925 sec 17

with the specific requirements of the cestui que trust, one can not be sole settlor and sole beneficiary to the same trust, by giving notice as beneficiary to the cestui que trust was intended as settlor (why the Live record of Birth was attached to the notices, this is due to once a settlor revokes the trust, the trustee is trustee to the settlor when there is no longer a beneficiary to the trust due to the trust being revoked. Until the trust is returned in full 100% of the corpus, in this case the corpus is the STOCK²³ to lands in trust that was invested, as well as choice of land held by fee-simple with a use for a fee and if in possession of lands claimed makes a quasi trustee²⁴, trustee by implication. Therefore as settlor to the cestui que trust I give notice that I Settlor Name has never intended on creating the cestui que trust, I am and have released all of the rights duties and actions real personal and mixed and I am also seized of the right of possession ownership and the fee of the cestui que trust held in trust (deforcement).

I wish to have the trust terminated in accordance with law and equity for not intending to create the statutory trust known as the cestui que trust created by the settled lands and settled estates acts. I release and indemnify the trustees and agents of any wrongdoing in the creation or administration of the trust, Including any and all previous notices not replied to or determined up until this document is received, that this current letter of wishes that includes: notices of revocation of cestui que use and claim of disseisin²⁵ in the freehold as the settlor with no intention to create the cestui que trust and to make waste of my inheritance is valid and the true intention and wishes of myself as settlor now that i fully understand the interactions between men and how english law and the conveyance of lands and not revoking that trust is detrimental to my life, no competent individual with full knowledge and understanding of this system of municipal corporations would agree to be part of the land trust when capable of self sustaining themselves outside the system of equitable benefit, I find there is no benefit when everything is given away for equitable rights and duties when I am capable of taking care of my own lands and future.

On receiving the passing of accounts in accordance with the conveyance, I will accept the passing of accounts and release and indemnify all trustee to the cestui que trust in accordance with the cestui que trust laws.

I give you the authority to terminate the trust as a valid trust, due to myself as the settlor did not intend to create the cestui que trust at birth, and give the authority to wind up the trust and pass the corpus of the trust including trust accounts representing the stock to lands in trust to be returned back to myself as settlor.

Due to the requirements of the cestui que trust, consent is required from the settlor to the trustee to give a deed that carries title²⁶, therefore I Settlor Name as settlor to the cestui que trust grants the authority to you as trustee to create a deed that carries title in the name of the settlor Settlor Name in accordance with the notices attached, the title will not be by purchase or descent yet trustee only has a use for a fee and requires a correction of registries and a new settlement²⁷ created as stated by the settled lands act.

The trustee is to be paid in accordance with law and equity the required fees for the service to be paid out of the “stock Funds” from the corpus of the trust from the lands held in trust.

The settlor wishes the trustee to determine the following:

1. The existence of a statutory trust and cestui que (Settled Lands Act sec 1 & 2)

23Settled Lands Act sec 36

24Treatise on law of trusts and trustees pg #14

25B.C.G.E.U. v. British Columbia pg #13

26Treatise on law of trusts and trustees pg #14

27LAND (SETTLED ESTATE) ACT R.S.B.C. 1979 pg #1.h

2. That the settlor did not intend to create the cestui que trust
3. That the settlor has an absolute right to revoke the trust for not intending to create the cestui que trust.
4. Determine the attached revocations and notices and convey the full corpus of the trust being lands and the stock to lands in accordance with the Succession Duty act and Canadian Ownership Control and Determination Act as well as Settled Lands Act.
5. Vest the full corpus of the trust as a valid trust back to the settlor in accordance with the Settled Lands Act and associated Acts created for the full and proper administration and termination of the lands in trust in full.
6. Once 100% of the corpus of the trust is returned have the trust terminated under Settled Lands Act 1925 sec 17 and any perform any other requirements
7. all associated fees and payments for fulfilling the duties within this entire notice(s) to be paid from the "Stock" of the corpus of the estate in trust (Settled Lands Act second schedule paragraph 1) .

Beneficiaries

If applicable, include details of any of the following: the priority which you foresee amongst the Beneficiaries, whether certain Beneficiaries should only receive funds in the case of death of all your children or whether a spouse/civil partner takes a special position. For example, "My wife should take priority over the rest of the Beneficiaries.

The cestui que trust is in the name of the settlor Settlor Name, the settlor granted the cestui que trust unintentionally due to undue influences²⁸, I wish that the trust be revoked and immediately returned to the settlor, the corpus of the trust being lands and the Stock, (stock is representing the lands in trust) the settlor wishes the trustee to proceed with a full passing of the accounts immediately without delay, (succession duty act²⁹, Canadian Ownership Rate act³⁰) in accordance with law and equity (the conveyance)³¹ Settled Lands Act 1925.

Consultation

Insert the details of particular people whom you would want the Trustees to consult with. Details of professional advisors to be consulted should also be included in here.

Contact the quasi trustee in possession of the lands in fee simple to verify the absolute entitlement to the lands they hold in trust as quasi trustee and the second level of use for a fee by implication of purchase of lands held in trust as attached in the following notices.

Due to the capacity of the quasi trustee and no privity of the settlor, and being the second level of use, the first trustee Lieutenant Governor of State/Prov should give notice to the quasi trustee of the determination to assure the quasi trustee has notice in accordance to the letter of wishes of the settlor and your determination of absolutely entitled by the settlor with no intention to create, due to the fiduciary duties appointed and conveyed upon you attached to these conveyances and the high probability most, without looking extensively into the basics of land law will, not understand their duties to the settlor and the requirement to exercise certain powers they hold in trust for the settlor.

28N-Krypt International Corp. v. LeVasseur, 2018 BCCA 20 pg #15

29Succession Duty Act, 1853

30Canadian Ownership and Control Determination Act pg #16

31Settled Lands Act 1925 sec 106

If required the trustee is to make application to the Supreme Court of British Columbia for advice or direction³² on vesting and passing the accounts as well as transfer of title and possession to the settlor absolutely entitled and not a title by purchase or descent.

Contact settlor and give determination within 28 days of receiving this letter of wishes and the attached notice of revocation of cestui que trust as well as the unregistered title to lands the corpus of the trust.

Due to the settlor being seized of Possession and Ownership correspondence and replies are sent to a P.O Box or physical address or youremail@live.com

Kind Regards

Settlor Name

youremail@email.com

dated: _____

Signature of settlor: _____

Notice of Release of Cestui Que Use³³

Provided always and it is hereby declared that it shall be lawful for the said Settlor Name by any deed or instrument in writing under his hand and seal, or by his last will absolutely revoke and make void all or any part of the limitations, appointments, trusts and estates herein before limited, appointed, declared and contained as the whole or any part of the hereditaments hereby limited and appointed ; so and in such manner as the same hereditaments and premises to which such revocation shall extend, may stand limited in the same manner, and subject to the same powers of appointment, as if these presents had not made or executed, any thing herein before to the contrary thereof in anywise notwithstanding.

That I Settlor Name release all of the rights duties and actions real personal and mixed as cestui que use, that I no longer hold any hereditaments as cestui que use that I am (deforcement) seized of the cestui que trust as settlor that did not intend to create the cestui que trust that was created at birth, nor did I understand that by not revoking the cestui que trust at the age of majority that the capacity of cestui que use and fee simple would be the capacity and estate that all issues are determined by, due to the undue influences of society I did not know I was acting in another capacity and therefore release all of the rights duties and actions real personal and mixed and will no longer act as the cestui que use nor accept any benefit for the fee simple, including purchase of lands that I as settlor have the absolute right of possession and ownership and the fee to, once the cestui que use has been revoked in accordance with law.

Due to the settlor being seized of Possession and Ownership correspondence and replies are sent to a P.O Box or physical address or youremail@live.com

Kind Regards
Settlor Name
youremail@email.com

dated: _____

Signature : _____

Notice of Revocation of Cestui Que Trust³⁴

Provided always and it is hereby declared that it shall be lawful for the said Settlor Name by any deed or instrument in writing under his hand and seal, or by his last will absolutely revoke and

³³Settled Lands Act 1925 sec 19 and 30

³⁴Settled Lands Act 1925 sec 16 & 17

make void all or any part of the limitations, appointments, trusts and estates herein before limited, appointed, declared and contained as the whole or any part of the hereditaments hereby limited and appointed ; so and in such manner as the same hereditaments and premises to which such revocation shall extend, may stand limited in the same manner, and subject to the same powers of appointment, as if these presents had not made or executed, any thing herein before to the contrary thereof in anywise notwithstanding

That Settlor Name as settlor to the statutory trust known as the cestui que trust represented by the settled estates and settled lands acts hereby revoke the cestui que trust (land settlement as settled estate) as settlor, I Settlor Name did not intend to create the cestui que trust (land settlement as settled estate) by tacit acceptance, Due to undue influences the fact that majority in the capacity of fee-simple are not aware of what was granted to be part of the equitable group of fee-simple and to accept being seized of the right of absolute ownership while acting in their own right and not in right of another,

Due to the undue influences of society and what the majority believe the law and equity are, makes it impossible to understand the land tenure and uses and trusts jurisdictions whilst living as livery by seisin, unless one takes it upon themselves to learn the entire English system of law from 1066 to today, also including Roman and Justinian law, to truly understand the system of law AND equity English law has grown into, especially what power was given³⁵, who the juristic units³⁶ are and how capacities and all the types of jurisdictions work and how jurisdictions apply to these capacities in law when compared to the conveyance that was given. This also takes one into having to learn every foundation law within law of equity which includes; law of domicile, private international law and the conflict in law, land settlements that include settled lands and settled estates, law of conveyances, law of agency, law of property, and how all these foundation laws apply and to who and why. To simplify what seems to be very complicated is very simple in the concept of the settlor not intending to create a cestui que trust and the change in capacity and jurisdiction in a vertical manner which are the capacities (rights) to land in trust.

All jurisdictions of equity and the people within them are capacities within the uses and trusts, and are agents to a municipal corporation first³⁷, those acting as strict function of government³⁸ are trustees to the settled lands act, and to the donor/settlor of the lands to the settled lands acts, the settlor has the right to claim from that equitable class of fee-simple persons within the uses and trusts class of subject when the settlor complies with the conditions of revoking the cestui que trust³⁹, the condition subsequent is by revoking the cestui que use along with a claim of disseisin in the freehold⁴⁰, forfeiture removes the bar of equity to claim the lands what is rightfully the settlors when you the settlor did not intend to grant the lands and accept municipal (civil) rights and duties due to the beliefs of majority within English common law jurisdictions essentially being heavily influenced upon you.

The beliefs of majority within equity do not understand the basics to the system and how each

35 O'Donohue v. Canada, 2003 CanLII 41404 (ON SC) pg #19

36 Rochon v. British Columbia, 2007 BCSC 1060 pg #18

37 Blackstone Commentaries Vol 1 #20

38 LAND (SETTLED ESTATE) ACT R.S.B.C. 1979 pg #1.a

39 Commentaries upon Littleton pg #21

40 Columbia Law Review Vol 5 1905-12-01 pg #22

individual chooses the system of land tenures and uses and trust with corporate rights and duties⁴¹, the belief that they are the true owner in reality, when they are not, it is only the equitable right ownership with only a use, these beliefs of being absolute owner in rem⁴² when not, and having to learn the entire system myself in order to prove the 3 certainties⁴³ to the trust and to give constructive notice of the revocation of the cestui que trust as settlor for a trust I never intended to create, yet the trust is a valid trust and not a sham trust, I did not create the trust for illegal purposes I was just born and therefore could have no intent at the time of creation, same when ratified when of age as stated by the infant act, I also had no intention or any idea I was in a trust and cestui que use⁴⁴ to be able to make an illegal trust for illegal purposes therefore the cestui que trust in the name of Settlor Name is in fact a valid trust⁴⁵, and due to the laws of sham trusts within British Columbia Canada, even if the trustee does not have clean hands all that is required is the settlor to have clean hands and the trust is revoked and closed as if the trust went to a sole beneficiary, since the trust is returned to the one that did not intend to create it, this includes payment for your services to the trust and to be paid out of the stock that represented that value of lands held in trust as stated by the succession duty act and canadian ownership determination act.

I hereby release and indemnify all trustees and agents from any future court action for any previous issues that may arise or have arisen out of the creation or administration of the trust and must vest the trust immediately in accordance with law and equity..

Due to the settlor being seized of Possession and Ownership correspondence and replies are sent to a P.O Box or physical address or youremail@live.com

Kind Regards

Settlor Name

youremail@email.com

dated: _____

Signature of settlor: _____

Notice/Order

RELEASE and CONVEY Lands and stock to the Settlor absolutely entitled *Settlor to Settled Lands Act 1925 sec 16*

Notice To: The Office of the Honourable Lieutenant Governor of State/Prov as the Trustee in possession of lands held in a strict land settlement created at my natural birth:

Settled Lands Act 1925 Sec 16 1(ii) Where any person of full age becomes entitled to require a legal estate in the settled land to be vested in him in priority to the settlement, by reason of a

41Thomson Newspapers Ltd. v. Canada pg #23

42Harvard Law Review, Volume 28. Pg #24

43Saugestad v. Saugestad, 2006 BCSC 1839 pg #25

44O'Dell v. Hastie 1968 513 SK QB pg #26

45Mordo v. Nitting et al, 2006 BCSC 1761 pg #9

right of reverter, statutory or otherwise, or an equitable right of entry taking effect, or on the ground that his interest ought no longer to be capable of being over-reached under the powers of this Act, the estate owner shall be bound, if so requested in writing, to transfer or create such legal estate as may be required for giving legal effect to the rights of the person so entitled;

it is hereby declared that Settlor Name is of full age and entitled to require a legal estate in the settled land to be vested in myself Settlor Name in priority to the settlement, by reason of a statutory right of reverter as settlor with no intention to create the land trust, that my (Settlor Name) interest ought no longer to be capable of being over-reached under the powers of Settled Lands Act 1925, the estate owner shall be bound, if so requested in writing, to transfer or create such legal estate as may be required for giving legal effect to the rights of the person so entitled⁴⁶ is absolutely entitled to possession and receipt of the rents and profits of the settled estate(lands & Stock) for an estate greater than a life estate to lands and hereditaments held in trust in accordance with the Trust and Settlements Variations Act sec 1(b)⁴⁷ and LAND (SETTLED ESTATE) ACT 1979 sec 2, 28 & 34⁴⁸ and Settled Estates Act 1925 sec 16 and Trustee Act sec 59⁴⁹ and Property Law Act sec 10⁵⁰; The Office of the Honourable Lieutenant Governor of State/Prov is in possession (disseizin) of the lands and is keeping the settlor absolutely entitled out of possession and True Ownership (deforcement⁵¹) as the absolute Inheritance (13.Ed.1.Stat.1.ch.1) of Settlor Name and is an injury in common law and equity (see: Waste 20.Ed.1.stat.2.c.3)

This is an OFFICIAL- WRITTEN- NOTICE

Whereas; Settlor Name, as settlor, is absolutely entitled to possession and receipt of the rents and profits of the settled estate for an estate greater than a life estate to lands and hereditaments held in trust in accordance with the Trust and Settlements Variations Act sec 1(b) and LAND (SETTLED ESTATE) ACT 1979 sec 2, 28 & 34 and Settled Lands Act 1925 sec 16 and Trustee Act sec 59 and Property Law Act sec 10 and;

Whereas; Settlor Name claims the below stated lands and STOCK to lands to be his absolute right and inheritance, and; Whereas; The said Office of The Honourable Lieutenant Governor of State/Prov has not entry, unless after the disseizin, and whereupon he complains that the aforesaid Office of The Honourable Lieutenant Governor of State/Prov (In Right of Her Majesty the Queen) deforces him. Therefore; Settlor Name demands justly and without delay that The office of the Honourable Lieutenant Governor of State/Prov render and convey to Settlor Name the following lands⁵² :

N/W corner N76.98861 W448.996076, N/E Corner N78.394261 W173.891776,
S/E

Corner N87.37640 W125.0985858, S/W Corner N465.85250 W196.0306733,
include diagram/land titles map

The Following notice to lands below (copy of notice sent is attached at the end of supporting

46Settled Lands Act sec 16.1(ii) and sec 16.7

47Smith v. Royal Trust Corporation

48LAND (SETTLED ESTATE) ACT 1979 pg 17 #1

49Trustee Act pg #28

50Property Law Act pg #12

51Blackstone Commentaries Volume 3 first edition pg #11

52Commentaries on the Laws of England (1765-1769) Book 2 Appendix § 1. Writ of Entry sur Disseizin in the Post; or, Praeipice.

documents) are held by the Fee-simple quasi trustee by Purchase.

Settlor Name, settlor to the cestui que trust is hereby giving notice as required under the Trust and Settlements Variations Act, Settled Estates Act, Settled Lands Act, Property Law Act and Trustee Act to **All Trustees including the The Office of The Honourable Lieutenant Governor of State/Prov** as the grantor of the title by purchase as trustee to the 1st level of uses and trust of the land held in trust by a statutory trust represented by the settled lands act. My objective is to enforce my absolute right and entitlement to the inheritance of the land settlement, and to give constructive notice that I Settlor Name at no time intended to create the cestui que trust and hereby give notice of revocation of the cestui que use and give notice as settlor that did not intend to create the cestui que trust, to release and convey the corpus of the trust being the lands and the stock representing the lands in trust, Including all the rights and interests attached to the cestui que trust. The Fee-simple having full notice of the Trust, yet by not acting would be to prove ignorance of the law and the warranties annexed to law and equity. The settlor being absolutely entitled to the inheritance and all interests attached to be returned, plus interest (if applicable).

The lands shown below and above are being claimed together as One territory, Name of Fee-Simple in Possession is in possession of the lands by purchase and therefore quasi trustee to the lands in trusts . The lands stated above presently being held in possession of The Office of the Honourable Lieutenant Governor of State/Prov as trustees to the statue of uses 1535(19.Car.2.ch6) the first level of trust.

A copy of the below notice was sent to Name of Fee-Simple in Possession as trustee to the lands. Name of Fee-Simple in Possession and the office of The Honourable Lieutenant Governor of State/Prov are in possession of the trust corpus claimed as the absolute right of the settlor to the cestui que trust.

Legal Description and Parcel ID

- Lot ! Plan !!!! District Lot !!! Land District !! Except Plan
344.491 Acres Annexed to this notice

include diagram/land titles map

Note: Estates in Reversion is still in force today, yet it is out of use, This CONSTRUCTIVE NOTICE is to make sure that the trustees to the land trust agreement, as well as those under and subject to the English law uses and trusts jurisdiction, have FULL- NOTICE and respect the law and warranties annexed to the original land trust agreement⁵³, including their duties to it.

I would also like to bring to your attention 3.ED.1.ch.24 & 3.ED.1.ch.35, The Great Charter 1225 ch.4, 6 Anne chapter 18⁵⁴. 19 Charles 2 chapter 6⁵⁵ and Bill of Rights 1688⁵⁶ along with many others protecting the interest of the settlor and the warranties attached.

Order: The Office of the Honourable Lieutenant Governor of State/Prov as trustee, in possession of the lands in trust, is to IMMEDIATELY RELEASE and CONVEY to the settlor Settlor

⁵³Settled Lands Act 1925 sec 106

⁵⁴6 Ann. c. 18 pg #29

⁵⁵19.Car.2.ch.6 pg #30

⁵⁶Bill of Rights 1688 ph #31

Name, in accordance with law and equity, the above stated land claim⁵⁷.

Due to the seriousness of this matter if no response dealing with this matter, you are required to make a petition to the Supreme Court of British Columbia within the inherent jurisdiction of the court within 28 days to seek assistance in determination of the valuable consideration and that I Settlor Name has the absolute right to the lands held in trust and the happening of the event which is that I the settlor had no intention of joining the English law group and is not my folly due to being created at birth without my knowledge.

If no response within 28 days a petition will be made to the Supreme courts of British Columbia to have the determination made, and enforcement of these notices as absolutely entitled in common law and equity as settlor.

Due to the settlor being seized of Possession and Ownership correspondence and replies are sent to a P.O Box or physical address or youremail@live.com

Kind Regards

Settlor Name

youremail@email.com

dated: _____

Signature of settlor: _____

Notice of legal action commencing in 28 days

Due to the failure to respond in any form to or attempt to deal with this matter, this is notice of legal action commencing in 28 days if failure to respond and/or start to comply with these notices, with notice to me of commencement of the vesting procedure.

Due to the severity of the matter, As you should be aware of the statutory trust and now aware that I never intended to create the cestui que trust, and that due to being in reversion with an interest in remainder to the cestui que trust as settlor, and no longer in possession of ANY hereditaments as fee simple and now seized of the rights and corpus of the trust, is making for a dangerous situation for myself, as you should be aware, until the trust is 100% returned the rights and duties to the trust are in fact in place, this allows the assumption of being subject as cestui que use as well as assumed resident, where in fact I have moved my DOMICILE as sui juris not in fee simple with a residence but a territory and domicile of my own with full capacity being sui juris and not disabled by municipal law as agent and cestui que use, to a gift of lands to a cestui que trust.

I would also like to stress due to being out of possession and the fee, I am forced to pay fees monthly to live, I also can not self sustain these payments as you are aware I do not perform livery (work for a municipal agency) where one is required to use the life tenant assumption, as you are also aware of the assumptions of fee simple and require recognized exemptions to deal in the public as sui juris and absolutely entitled, where if i was not out the fee and possession and ownership these would no longer be

⁵⁷Settled Lands Act 1925 SECOND SCHEDULE
Transitional Provisions affecting Existing Settlements

of issue when confirmed as such.

Due to being out of possession of what is rightfully mine and no longer being able to live without conflict within fee-simple where there should be none, I am forced to deal with this matter immediately or my life is in danger, I can no longer allow this to continue due to ignorance and playing on specifics in law to a trust I did not intend to create where equity will not force me to make a gift, yet to terminate a trust as settlor, the settlor must prove the 3 certainties, one of the test to proving the 3 certainties is intention to create a trust, in order to prove no intention to create the trust the settlor must show that there was no intent at the time the trust was established, in essence a trust that does not have a valid constitution, and why as settlor I must release and indemnify the trustees of that wrong .

whereas you are now aware this constructive notice does in fact prove the exactness required and how these assumptions have been in fact refuted beyond a doubt, the requirements of a trust that I did not know about or intend to create can in fact force rights and duties onto an individual that can not prove the 3 certainties and all that goes with the statutory trust for what is to be for "the benefit of the one it was created for".

I am also making you aware that due to the extreme costs of learning the english law and how one is made subject and the assumptions one must refute in accordance with the conveyance without confirmation of the proper capacity and rights as settlor creates a situation for those performing a strict function of government to assume my consent, these assumption along with all those within uses and trusts requiring a payment for the necessities of life in which i am currently seized of the rights and assets of the corpus of the trust.

due to the assumption of fee simple the necessities of life that if the corpus was returned in full I would not require fee simple for anything, due to being able to self sustain myself, yet being out of possession and ownership and the fee, while having to spend all my time and any value i can come up with must go into basic living.

Without the return of the trust in full as requested is forcing me to perform the duties of the trust *in a forced manner as cestui que use*, where equity will not force a gift.

Due to the amount of correspondence sent to the acting Lieutenant Governors of Manitoba and British Columbia, as well as the acting Attorney Generals of Manitoba and British Columbia with no response whatsoever to deal with this matter this will be the last notice in accordance with settled estates act and the trustee act, your next notice will be notice of petition as settlor to the cestui que trust based on no intention to create the trust and failure to determine and perform the required fiduciary duties along with an order to comply with this notice.

If no response within 28 days dealing with this matter a certificate of pending litigation (lis pendens) will be registered with land titles along with a petition to the Supreme Court of British Columbia in accordance with law and equity,

Therefore the next notice will be a notice of petition in order to get this matter determined and finalized in a reasonable manner and amount of time with clean hands.

Due to the settlor being seized of Possession and Ownership correspondence and replies are sent to a P.O Box or physical address or youremail@live.com

Kind Regards

dated: _____

Settlor Name

youremail@email.com

Signature of settlor: _____

Supporting Documents

1. LAND (SETTLED ESTATE) ACT R.S.B.C. 1979, CHAPTER 215

a. Interpretation

1. In this Act

“court” means the Supreme Court;

“settled estates” means all interests in land which are the subject of a settlement; and for the purpose of this Act an entailed interest after the possibility of issue is extinct is deemed a tenancy for life;

“settlement” means an Act of Parliament or of the Legislature, or a deed, agreement, will or other instrument, under which an interest in land stands limited to or in trust for any persons by way of succession, and includes an instrument that affects the estate of any of those persons exclusively.

b. Estates in remainder or reversion

2. An estate or interest in remainder or reversion not disposed of by the settlement and reverting to a settlor or descending to heir of testator, is deemed an estate coming to that settlor or heir under the settlement.

c. Rules for determining settled estates

3. In determining what is a settled estate under this Act, the court shall be governed by the state of facts, and by the trusts or limitations of the settlement at the time of the settlement taking effect.

d. Land of infants

4. Where an infant in his own right is seised of or entitled to land of an estate in fee simple, or any smaller estate, the land is deemed a settled estate, the land is deemed a settled estate under this Act.

- e. Application to exercise powers conferred by this Act

28. A person entitled to possession or receipt of the rents and profits of a settled estate for a term of years determinable on his death, or for an estate for life or a greater estate, and also a person entitled to possession or receipt of the rents and profits of a settled estate as assignee of a person who, but for the assignment, would be entitled to the estate for a term of years determinable with any life, or for an estate for any life or a greater estate, may apply to the court by petition in a summary way to exercise the powers conferred by this Act.
- f. Notice of application and service

34. Notice of an application to the court under this Act shall be served on all trustees who are seized or possessed of an estate in trust for a person whose consent to the application is required, and on any other parties who in the opinion of the court ought to be served, unless the court thinks fit to dispense with that notice.
- g. Rules and orders

46. General rules and orders of court for carrying out the purposes of this Act, and for regulating the procedure and practice of the court to which this Act relates, and for regulating the fees payable to the Crown, and the fees and allowances to all officers and solicitors of the court for these matters, shall be made by the Lieutenant Governor in Council, and until rules and orders are expressly made the rules and orders of the court apply to proceedings under this Act. When there are no rules distinctly applicable to a particular proceeding, then those rules and orders shall be followed as closely as the case permits.
- h. Rules and orders to be laid before Parliament

47. All general rules and orders made as stated above shall be laid before the Legislative Assembly within 15 days after they are made, if the Legislative Assembly is sitting, or, if not, within 15 days after the commencement of the next ensuing session.
- i.

2. Mercer v. Attorney General for Ontario, 1881 CanLII 6 (SCC)

- a. The sovereign chosen by society holds the land in trust for the people, as a fidei commissum. (Blacks law 9th edition : fideicommissum: from brevity, the fideicommissum will here be called “the trust”, the person upon whom it was imposed (fiduciarius) 'the trustee', and the person in whose favor it was imposed (fideicommissarius) the “beneficiary”.
- Fideicommissarius: See Cestuequi Trust.
- Cestuequi Trust: One who possesses equitable rights in property.
- Cestque vie: The person whose life measures the duration of trust, gift, estate, or insurance contract.)
- b. (701-2)...It was admitted by the learned counsel who represented the provinces in the argument before us, that this was true with respect to all matters of legislation, but it was contended that when the Act (Const. 1867) deals with “property” the rule was inverted and that the provinces take “all property” not by the Act in precise terms given to the Dominion.
- The sole foundation for this contention appears to me to be based upon an assumption

which in my judgment is altogether ERRONEOUS, namely, that the BNA Act, transfers as it were the legal estate in the Crown property from the Crown and vests it in the Dominion and the provinces respectively as corporations capable of holding property, real and personal, to them, their successors and assigns for ever, BUT THE ACT CONTEMPLATES NO SUCH THING.

3. Commentaries on the law of agency as a branch of commercial and maritime jurisprudence, with occasional illustrations from the civil and foreign law
 - a. Object of the author in his Commentaries. It is a general maxim, that whatever a man sui Juris may do of himself, he may do by another. And cor relatively what is done by another is to be deemed done by the party himself.
 - b. let us proceed to the consideration of the law of agency, a subject intimately connected with all these branches, and in no small degree necessary to a full and exact exposition of the doctrines applicable to them. From this we shall be led, by a very easy and natural transition, to the law of partnership. And these being discussed, the path to others will lie open before us, unobstructed by any collateral inquiries, which may embarrass our progress
 - c. It is obvious to remark, that a large proportion of the business of human life must necessarily be carried on by persons, not acting in their own right, or from their own intrinsic authority, over the subject-matter, but acting under an authority derived from others, who, by the principles of natural and civil law, are exclusively invested with the full and complete original dominion, authority, and right over such subject-matter. By the general theory of our municipal jurisprudence, and probably by that of all civilized nations, professing to be governed by a regular system of laws, every person is invested with a general authority to dispose of his own property, to enter into contracts and engagements, and to perform acts, which respect his personal rights, interests, duties, and obligations, except in cases where some positive or known disability is imposed upon him by the laws of the country, in which he resides, and to which he owes allegiance.
 - d. Every person not under such a disability, is treated as being sui juris, and capable, not only of acting personally in all such matters by his own proper act, but of accomplishing the same object through the instrumentality of others, to whom he may choose to delegate, either generally, or specially, his own authority for such a purpose
 - e. PDF Page 43:
In general, it may be said, that every person sui juris, is capable of becoming both a principal and an agent, unless there exists some disability or prohibition by the municipal law, which is to regulate his rights and duties.
 - f. PDF Page 44:
If, therefore, an infant should make a letter of attorney to another, to take livery of lands on a feoffment to him, it will be good ; for it will be intended to be for his benefit. But if an infant should make a feoffment, and execute a letter of attorney to another, to make livery in his name to the feoffee, it will be void [or' at least voidable] ; for such feoffment and livery will be intended to be to his prejudice.
 - g. PDF Page 53:
And this is upon the same enlarged principle, which governs in the civil law ; that the act is not to be treated as void between the agent and his substitute, unless, indeed, the

principal should interfere and prohibit the substitute from acting.

4. A Readable Edition of Coke Upon Littleton

by Sir Thomas Littleton , Thomas Coventry , Edward Coke 1830

a. Co.Litt. 266a.

There is *jus proprietatis*, a right of ownership, *jus possessionis*, a right of seisin or possession, and *jus proprietatis et possessionis*, a right both of property and possession; and this last is anciently called *jus duplicatum*, or droit droit. For example if a man is disseised of an acre of land, the disseisee has *jus proprietatis*, and the disseisor has just possessionis [that is,as against strangers, but not as it should seem against the disseisee, as against him the disseisor cannot well be said to have a *right*, but only a bare naked possession]; if the disseisee releases to the disseisor, then the disseisor shall have *jus proprietatis et possessionis* [and his title will be complete]

b. Pdf page 53

A lawful or pure inheritance] Here it is well put in the disjunctive lawful or pure, for every fee-simple is not lawful. A disseisor, abator, intruder, usurper, &c. Have a fee-simple, has it either by purchase or descent. If by wrong, then either by disseisin, intrusion, abatement, usurpation, &c.

c. Pg 590 **No remitter if one estate be at common law and other under stat of use.**

The reason is no folly can be attributed to the infant in accepting the feoffment at the time it was made. Hence therefore, in this case the law respects the time of the feoffment, and not the time of the death: and albeit the infant might have waived the estate at his full age, yet [seeing that would be to his loss and prejudice, he shall have the benefit of the feoffment till his ancestor's death, when] the right of the estate tail descending on him either within age, or of full age, shall work a remitter[to his estate in tail]. But since littleton wrote, there is a great alteration in remitters by the statute of uses H.8.c.10; for if a tenant in tail now make a feoffment in fee to the use of his son (within age) and his heirs, and dies, and the right of the estate tail descends to the son within age, yet he is not remitted, because the statute executes the possession in such plight, manner, and form, as the use was limited; [whereby the issue is in, not of the estate discontinued, but of a new use under the statute]. But if the issue in tail in this case waives the possession, and brings a formedon in the descender, and recovers against the feoffees, he shall thereby be remitted to the estate tail; otherwise the lands may be so incumbered that the issue in tail would be at great inconvenience; but if no formedon be brought, and that issue dies, his issue shall be remitted; because an estate in fee-simple at common law descends upon him

5. 1 Richard.III Ch1.cap.1.

a. **All acts made by or against cestui que use shall be good against him, his heirs, and feoffees in trust. The several inconveniences of secret feoffment. The estate of tenant in tail saved.**

b. first because that by secret and unknown feoffments, great unsurety, trouble, costs, and grievous vexations do daily grow between the king's subjects, in so much that no man that buyeth Lands, Tenements, rents services, or other hereditaments, nor women which have jointures or dowers in any Lands, Tenements, or other Hereditaments, nor the last will of

men be performed,nor annuities granted to any person or persons for there service term of the life or of years, nor annuities granted to any person or persons for their service term of lives or otherwise, be a perfect surety, nor without great trouble and doubt of the same, by reasons of such privie and unknown feoffments; for remedy where of it is ordained, established, established and enacted, by the advice of the Lords Spiritual and Temporal, and commons in the present parliament assembled, and by the authority of the same.

- c. That every estate, feoffment,gift,release,grant,lease, and confirmation of Lands,tenement,rents,services, or other Hereditaments, made or had hereafter to be made or had by any person or persons being of full age, of whole memory, at large and in dures to any to any person or persons, and all recoveries and executions had or made, shall be good effectual to him who it is, so made, had given and to all other to his use, against the seller,feoffors,Donors,Granters,of the same, Only as heir or heirs to the same sellers,feoffors,Donors,or Granters,and every of them, and against all others having claiming any title or interest in the same,Only to the use of the same sellers,feoffors,Donors, or Granters or his heir or there said heirs, at the time of the bargain,sale,covenant,gift, or grant made; saving to every person or persons such right title action,or interest,by reason of any gift in tail there of made,as they ought to have if this act had not been made.
6. Infants Act, RSBC 1996, c 223
- a. Domicile of infant
 - 19.1 The domicile of an infant is,
 - (a) if the infant usually resides with both parents and the parents have a common domicile, that domicile,
 - b. Lease of land belonging to infants
 - 36 (1) If a person under 19 years of age holds or is entitled to land or to leasehold land for an absolute interest, and it appears to the court to be for the person's benefit that a lease be made of the property for a term of years, to encourage the erection of buildings on the land, to repair buildings on it, to work mines, or to otherwise improve the land, or for farming or other purposes, the infant or his or her guardian in the infant's name, by the order of the court made on a summary application of the infant or his or her guardian, may lease the land or a part of it, to the extent of his or her interest in it, for the term and subject to the rents and covenants the court directs.
 - (2) In no case must any fine or premium be taken.
 - (3) In each case
 - (a) the best rent that can be obtained, regard being had to the nature of the lease, must be obtained,
 - (b) the lease and covenants must be settled and approved by the court,
 - (c) one copy of the lease must be executed by the lessee, and
 - (d) a copy executed by each party must be deposited for safe custody in a district registry of the court until the infant reaches 19 years of age, with liberty to proper parties to use them, if required, to enforce the covenants in them.
7. Settled Estates Act 1886 sec 34
- a. 34. The Court shall be at liberty to exercise any of the powers conferred on it by this Act

whether the Court shall have already exercised any of the powers conferred by this Act in respect of the same property or not and such powers may be exercised if the Court shall think fit notwithstanding any express declaration is contained in the settlement that they shall not be exercised and if in any settlement a provision is inserted purporting or attempting by way of direction declaration or otherwise to prevent or forbid the exercise by the Court of any of the powers conferred on it by this Act or attempting or tending or intended by a limitation gift or disposition over of settled land or by a limitation gift or disposition of other real or any personal property or by the imposition of any condition or by forfeiture or in any other manner whatever to prohibit or prevent any person entitled under this Act to apply to the Court to exercise the powers conferred by this Act from so applying or to induce such persons to abstain from so applying that provision so far as it purports or attempts or tends or is intended to have or would or might have the operation aforesaid shall be deemed to be void And an estate or interest limited to continue so long only as a person abstains from applying to the Court to exercise any of such powers or so long only as any of such powers shall remain unexercised shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from so applying or if any such power were not exercised discharged from liability to determination or cesser by or on such persons so applying or by or on any such power being exercised.

8. The principles of the law of real property, according to the text of Blackstone :

incorporating the alterations down to the present time 1837, by Blackstone, William, Sir, 1723-1780; Stewart, James, 1805-1860; William Blackstone Collection

a. and first, of CORPOREAL HEREDITAMENTS. Pg 31

The objects of dominion or property are things, as contradistinguished from persons : and things are by the law of England distributed into two kinds; things real, and personal. things personal. Things real are such as are permanent, fixed, and immoveable, which cannot be carried out of their place ; as lands and tenements : things personal are goods, money, and all other moveables; which may attend the owner's person wherever he thinks proper to go.

In treating of things real, the subject of the present work, let us consider, first, their several sorts or kinds ; secondly, the tenures by which they may be holden ; thirdly, the estates which may be had in them ; and, fourthly, the title to them, and the manner of acquiring and losing it.

First, with regard to their several sorts or kinds, things Things real real are usually said to consist in lands, tenements, or hereditaments. Land comprehends all things of a permanent, substantial nature ; being a word of a very extensive signification, as will presently appear more at large. Tenement is a word of still greater extent, and though in its vulgar acceptation is only applied to houses and other buildings, yet in its original, proper, and legal sense, it signifies every thing that may be holden, provided it be of a permanent nature ; whether it be of a substantial and sensible^ or of an unsubstantial ideal kind. Thus liberum tenementum, franktenement, or freehold, is applicable not only to lands and other solid objects, but also to offices, rents, commons, and the like; and, as lands and houses are tenements, so is an advowson a tenement ; and a franchise, an office, a right of common, a peerage, or other property of the like unsubstantial kind, are,

all of them, legally speaking, tenements. But an hereditament, says Sir Edward Coke, is by much the largest and most comprehensive expression : for it includes not only lands and tenements, but whatsoever may be inherited, be it corporeal, or incorporeal, real, personal, or mixed. Thus an heir-loom, or implement of furniture which by custom descends to the heir together with an house, is neither land, nor tenement, but a mere moveable : yet, being in- heritable, is comprised under the general word hereditament: and so a condition, the benefit of which may descend to a man from his ancestor, is also an hereditament.

Hereditaments then, to use the largest expression, are of two kinds, corporeal and incorporeal. Corporeal consist of such as affect the senses ; such as may be seen and handled by the body : incorporeal are not the object of sensation, can neither be seen nor handled, are creatures of the mind, and exist only in contemplation.

Corporeal hereditaments consist wholly of substantial permanent objects ; all which may be comprehended consist. under the general denomination of land only. For landy says Sir Edward Coke, comprehendeth in its legal signification any ground, soil, or earth whatsoever ; as arable, meadows, pastures, woods, moors, waters, marshes, furzes, and heath. It legally includeth also all castles, houses, and other buildings : for they consist, saith he, of two things ; Land ; its land, which is the foundation, and structure thereupon : SO that, if I convey the land or ground, the structure or building passeth therewith. It is observable that water is here mentioned as a species of land,

b. OF INCORPOREAL HEREDITAMENTS

An incorporeal hereditament is a Right issuing: out of a thing Corporate (whether real or personal) or concerning, or annexed to, or exercisable within, the same.^ It is not the thing corporate itself, which may consist in lands, houses, jewels, or the like ; but something collateral thereto, as a rent issuing out of those lands or houses, or an office relating to those jewels.

Incorporeal hereditaments are principally of ten sorts ; Of ten sorts, advowsons, tithes, commons, ways, offices, dignities, franchises, corodies or pensions, annuities, and rents

9. Mordo v. Nitting et al, 2006 BCSC 1761

- a. [292] In order to be valid, trusts must comply with the three certainties at the time of settlement:

It is of course trite law that for a valid trust to come into existence, the three certainties - certainty of intention, objects and subject matter - must be met.... If the first requirement is not met -- i.e., a transfer of property is construed as not intended to have been subject to a trust obligation - the transferee takes the property beneficially ... If the first test is met but the intended trust fails due to uncertainty of subject matter or objects, then ... the property is held on a resulting trust in favour of the settlor...

[296] Simply put, Lewin distinguishes between a settlor with devious intent and a settlor who signs a document that does not have the legal effect he or she thought it would have. The discussion in Donovan Waters et al., *Waters' Law of Trusts in Canada*, 3rd ed. (Toronto: Thomson Carswell, 2005) at 145 - 149 [Waters] is consistent with the Lewin approach. Guided by Lewin, I will deal with the argument that the Trust was a sham as a precursor to the question of whether there was certainty of intention.

[297] On the issue of whether the trust was a sham, the question is this: Did Eida intend to create a valid trust, or were the documents executed to mask an intention to retain full control over the Trust Property? To answer the question, one must look

behind the documents which are said to conceal the sham, and weigh the other evidence of intention at the time the documents were executed.

[298] The Plaintiff argued that Eida's sole purpose in creating the Trust was to defeat Alex's WVA claim. However, motive is distinct from intent:

A transaction is no sham merely because it is carried out with a particular purpose or object. If what is done is genuinely done, it does not remain undone merely because there was an ulterior purpose in doing it (Lewin at paras. 4 - 26 citing *Miles v. Bull*, [1969] 1 Q.B. 258 at 264 [*Miles v. Bull*]).

Regardless of her motive, if Eida genuinely intended to create a trust, the Trust was not a sham.

[299] Intention is a question of fact. I am satisfied that Eida genuinely intended to create a trust. Mr. Wilson explained to Eida the effect of the Trust and the fact that the Trust would hold the property during Eida's lifetime. Further, at the time Eida executed the Form A on September 5, 2000, Mr. Wilson explained that she was transferring legal title to him as Trustee. He explained that Eida was relinquishing control of the Warehouse and was making a present gift to Viviane.

10. LAW REFORM COMMISSION OF BRITISH COLUMBIA REPORT ON THE LAND (SETTLED ESTATE) ACT LRC99 NOVEMBER 1988

a. C. Operation of the Legislation page 6

At common law, a person who received less than full ownership of land under a settlement could not deal with the land unless empowered to do so under the terms of the settlement. The Land (Settled Estate) Act permits settled land to be sold, leased or charged. Some of these things can be done by the life tenant, with the consent of other persons having interests in the land. Other powers can be exercised only by the court having "... due regard to the interest of all parties entitled," or when the court thinks an order is "necessary and expedient, in the interest of the parties concerned."

b.

11. Blackstone Commentaries Volume 3 first edition

a. Chapter 10 page 173

- b. If a man lease lands to another for a term of years, or for the life of a 3rd person, and the term expires by surrender, efflux of time, or death of the cestui que vie; and the lessee or any stranger, who was at the expiration of the term in possession, hold over, and refuses to deliver the possession to him in remainder or reversion, this is likewise a forfeiture. Forfeiture may also arise upon the breach of a condition in law:

12. Property Law Act [RSBC 1996] CHAPTER 377

- a. 10 (1) An estate in fee simple must not be changed into a limited fee or fee tail, but the land, whatever form of words is used in an instrument, is and remains an estate in fee simple in the owner.
- (2) A limitation which, before June 1, 1921, would have created an estate tail transfers the fee simple or the greatest estate that the transferor had in the land.
- (3) This Act does not prevent the creation of a determinable fee simple or a fee simple defeasible by condition subsequent.
- (5) A possibility of reverter or a right of entry for condition broken may be registered under the Land Title Act against the title to the land affected in the same manner as a charge.

13. B.C.G.E.U. v. British Columbia [1988] 2 SCR 214, 1988 CanLII 3 (SCC)

- a. (75) There cannot be a rule of law without access, otherwise the rule of law is replaced by a rule of men and women decide who shall and who shall not have access to justice. Re *Alfrey Investments Ltd. and Shefsky Developments Ltd. et al.*, 1974 CanLII 709 (ON

SC)

Extinguishment of Owner's Title. **A person in possession of land in the assumed character of owner, and exercising possibly the ordinary rights of ownership, has a perfectly good title against all the world but the rightful owner.** And if the rightful owner does not come forward and assert his title by process of law within the period prescribed by the provisions of The Statute of Limitations applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title. The Statute of Limitations is a law of extinctive, not of acquisitive prescription. It operates to bar the owner out of possession, not to confer title on the trespasser or disseisor in possession.

14. A Treatise on the Law of Trusts and Trustees

by Jairus Ware Perry, Edwin Alliston Howes

- a. § 849. (a) a deed from a trustee with consent of a sole beneficiary sui juris carries title; but he must know that the acts in which he concurs are a breach of the trust, and he must be capable of acting for himself.

15. N-Krypt International Corp. v. LeVasseur, 2018 BCCA 20

- a. [28] These statements may at first appear contradictory. However, they can be reconciled by appreciating that the relationship between equity and the common law is contextual (depending on or relating to the circumstances that form the setting for an event). In *Geffen v. Goodman Estate*, 1991 CanLII 69 (SCC), [1991] 2 S.C.R. 353, the Court considered the relationship between trust law and contract law in the context of determining whether a trust agreement had been entered into as a result of undue influence. After considering the framework for determining whether a presumption of undue influence applies, Justice Wilson turned to the nature of the particular transaction, saying at 378:
Having established the requisite type of relationship to support the presumption, the next phase of the inquiry involves an examination of the nature of the transaction. When dealing with commercial transactions, I believe that the plaintiff should be obliged to show, in addition to the required relationship between the parties, that the contract worked unfairness either in the sense that he or she was unduly disadvantaged by it or that the defendant was unduly benefited by it. From the court's point of view this added requirement is justified when dealing with commercial transactions because, as already mentioned, a court of equity, even while tempering the harshness of the common law, must accord some degree of deference to the principle of freedom of contract and the inviolability of bargains. Moreover, it can be assumed in the vast majority of commercial transactions that parties act in pursuance of their own self-interest. The mere fact, therefore, that the plaintiff seems to be giving more than he is getting is insufficient to trigger the presumption. [Emphasis added.]

16. Canadian Ownership and Control Determination Act

- a. Sources
Canadian Ownership and Control Determination Regulations, 1984 (SOR/84-431)
Canadian Ownership and Control Determination Act (R.S.C., 1985, c. C-20)
Canadian Ownership and Control Determination Forms Order, 1985, SOR/85-846
Canadian Ownership and Control Determination Forms Order, 1985, SOR/85-846
Gazette
Canadian Ownership and Control Determination Forms Order, 1985, form A-1 Gazette
Acts of the Parliament of Canada Chapter 1.55 1973 1974
Acts of the Parliament of Canada 34th Parliament 3rd Session Chapter 46 59

b. Canadian Ownership and Control Determination Act PART VI Canadian Ownership Rates of Trusts

c. Interpretation

47 In this Part,

1. beneficiary includes a person in whose favour or for whose benefit a discretionary power may be exercised; (bénéficiaire)

designated rate of interest means 12.3% per annum; (taux d'intérêt désigné)

discretionary interest means any estate or interest in or possibility of receiving income or capital of a trust that is dependent on, or the value of which may be increased or reduced by the exercise of or the failure to exercise, a discretionary power held by the trustee or trustees or by any other person or persons and, for greater certainty and without limiting the generality of the foregoing, a power to amend the terms of a trust or a power to determine the date at which all or any interests shall vest or at which all or any property shall be distributed is a discretionary power; (droit discrétionnaire)

interest in expectancy means an estate or interest in remainder or reversion and any other future interest, whether vested or contingent, but does not include a discretionary interest; (droit en expectative)

interest in possession means an estate or interest other than an interest in expectancy but does not include a discretionary interest. (droit en possession)

d. Determining Beneficial Ownership of Classes of a Trust

48 Subject to section 49, in determining the classes of formal equity and the beneficial Canadian ownership of a class of formal equity of a trust, other than a unit trust, the following rules apply:

(a) each of the following shall be a class of formal equity of the trust, consisting of 100 units:

(i) all interests in possession of beneficiaries whose interests can be expressed in terms of a right to a certain amount or percentage of all or any part of the income of the trust,

(ii) all interests in expectancy of beneficiaries whose interests can be expressed in terms of a right to a certain amount or percentage of all or any part of the income of the trust,

(iii) all interests in possession of beneficiaries whose interests can be expressed in terms of a right to a certain amount or percentage of all or any part of the capital of the trust,

(iv) all interests in expectancy of beneficiaries whose interests can be expressed in terms of a right to a certain amount or percentage of all or any part of the capital of the trust,

(v) all discretionary interests of beneficiaries with respect to all or any part of the income of the trust, and

(vi) all discretionary interests of beneficiaries with respect to all or any part of the capital of the trust;

(a.1) where a trust demonstrates to the Minister that the beneficial Canadian ownership of a class of formal equity of the trust does not accurately represent the beneficiaries' interests in the capital or income of the trust, or any part thereof, the Minister may adjust the beneficial Canadian ownership accordingly;

(b) subject to paragraph (c), each beneficiary of the trust shall be deemed to own a number of units of a particular class referred to in paragraph (a) determined in accordance with the formula

$(A_v/T_v) \times 100$,

calculated to two decimal places where

(i) A_v is the value of the interest of the beneficiary represented in that class, and

- (ii) Tv is the value of all beneficial interests constituting that class;
- c) subject to paragraph (d), the beneficial Canadian ownership of a class of formal equity that comprises discretionary interests in a trust shall be equal to the lowest Canadian ownership rate of any of the beneficiaries whose discretionary interests constitute that class determined as if the words “rounded to the nearest whole number” in section 16 read “rounded to the nearest 10th of a percentage point” and, for greater certainty, subject to paragraph (f), if such beneficiaries include a person that has or may have a Canadian ownership rate of nil, whether or not the identity of that person can be ascertained, the beneficial Canadian ownership of the class shall be deemed to be nil;
- d) the Canadian ownership rate of a trust shall be determined without regard to the existence of any discretionary power to consume, advance, appropriate, encroach upon or otherwise dispose of all or part of the capital or income of a trust to or for the benefit of any one or more individuals who have interests in that capital or income independently of the existence of the discretionary power, if the exercise of that power is limited by a determinable standard relating to the health, education, maintenance, support or comfort of such individual or individuals;
- e) any possibility that one or more persons will subsequently acquire interests in property of the trust at birth, on adoption or on marriage shall be disregarded;
- f) for the purposes of paragraph (b), the value of any income right, annuity, term of years, life interest or other similar estate and of any interest in expectancy shall be determined,
 - (i) where the income right, annuity, term of years, or other similar estate or the interest in expectancy does not depend on a life contingency, on the basis of compound interest at the designated rate of interest with annual rests, and
 - (ii) where the income right, annuity, term of years, life interest or other similar estate or the interest in expectancy depends on a life contingency, on the basis of compound interest at the designated rate of interest with annual rests and the standard of mortality set out in Table I of Schedule II;
- g) Tables II, III and IV of Schedule II shall be used as far as they may be applicable for the purpose of determining the value of any income right, annuity, term of years, life interest or other similar estate or interest in expectancy;
- h) for the purposes of paragraphs (f) and (g), the annual income from any property shall be deemed to be the product of the designated rate of interest and the value of the property;
- i) for the purposes of paragraph (b), where the value of any interest in a trust depends on the happening of a contingency other than a life contingency, the value of the interest shall be determined on the basis that the contingency will not occur, except that, if the Minister is satisfied that the contingency is substantially within the control of a person who is not dealing at arm’s length with a beneficiary of the trust, the value of the interest shall, if the Minister so directs, be determined as if the contingency had already occurred;
- j) for the purposes of paragraph (b), where the value of any interest in the trust depends on the happening of a contingency that the Minister is satisfied cannot reasonably be expected to occur, the value of the interest shall be determined on the basis that the contingency will not occur;
- k) for the purposes of paragraph (b), where the value of a particular interest in a trust depends on the death of a beneficiary before attaining such age, not exceeding 40 years, as is specified in the trust instrument, and the particular interest of the beneficiary is an interest in possession, the value of that particular interest and the value of any other interest determined with reference to the value of that particular interest shall be determined as if that beneficiary will attain the age specified in the trust instrument; and
- l) where each of the beneficiaries in whose favour a discretionary power may be exercised has a Canadian ownership rate of 100%, the Canadian ownership rate of the

trust may, if the trust so elects, be determined without regard to the existence of that discretionary power.

e. Canadian Ownership and Control Determination Act

Definition of non-eligible person

(2) For the purposes of this Act, the expression non-eligible person has the same meaning as it has under subsection 3(1) of the Foreign Investment Review Act, chapter 46 of the Statutes of Canada, 1973-74, and the regulations made pursuant to that Act, with such modifications as the circumstances require, except that, until September 1, 1987,

(a) the definition non-eligible person in subsection 3(1) of that Act shall be read as if subparagraph (a)(ii) of that definition were deleted therefrom; and

(b) subsection 3(5) of that Act shall be read as if the words "and permanent residents who have been ordinarily resident in Canada for more than one year after the time at which they first became eligible to apply for Canadian citizenship", wherever those words appear therein, were deleted therefrom.

f. Chapter 46 of the Statutes of Canada, 1973-74 Subsection 3(1) of the Foreign Investment Review Act

non-eligible person" means

(a) an individual who is neither a Canadian citizen nor a landed immigrant within the meaning of the Immigration Act and includes

(i) a Canadian citizen who is not ordinarily resident in Canada and who is a member of a class of persons prescribed by regulation for the purposes of this definition, and

(ii) a landed immigrant who has been ordinarily resident in Canada for more than one year after the time at which he first became eligible to apply for Canadian citizenship,

(b) the government of a country other than Canada or of a political subdivision of a country other than Canada, or an agency of such a government, or

(c) a corporation incorporated in Canada or elsewhere that is controlled in any manner that results in control in fact, whether directly through the ownership of shares or indirectly through a trust, a contract, the ownership of shares of any other corporation or otherwise, by a person described in paragraph (a) or (b) or by a group of persons any member of which is a person described in paragraph (a) or (b);

Presumption as to non-eligible persons

(2) Where, in the case of a corporation incorporated in Canada or elsewhere,

(2) (a) shares of the corporation to which are attached

(2) (i) 25% or more of the voting rights ordinarily exercisable at meetings of shareholders of the corporation, in the case of a corporation the shares of which are publicly traded, or

(2) (ii) 40% or more of the voting rights ordinarily exercisable at meetings of shareholders of the corporation, in the case of a corporation the shares of which are not publicly traded, are owned by one or more individuals described in paragraph (a) of the definition "non-eligible person" in subsection (1), by one or more governments or

agencies described in paragraph (b) of that definition or by one or more corporations incorporated elsewhere than in Canada, or any combination of such persons, or

(b) shares of the corporation to which are attached 5% or more of the voting rights ordinarily exercisable at meetings of shareholders of the corporation are owned by any one individual described in paragraph (a) of the definition "non-eligible person" in subsection (1) by any one government or agency described in paragraph (b) of that definition or by any one corporation incorporated elsewhere than in Canada, the corporation is, unless the contrary is established, a non-eligible person.

g. Acquisition of Control

(3) For the purposes of this Act,

- (a) control of a Canadian business enterprise may only be acquired,
 - (i) in the case of a (i) in the case of a
 - (ii) in the case of any other Canadian business enterprise, by the acquisition of all or substantially all of the property used in carrying on the business in Canada;
- (b) control of a Canadian business enterprise that is a Canadian business carried on by a corporation either alone or jointly or in concert with one or more other persons is not acquired by reason only of
 - (i) the acquisition by any person or group of persons of shares of the corporation to which are attached
 - A) less than 5% of the voting rights ordinarily exercisable at meetings of shareholders of the corporation, in the case of a corporation the shares of which are publicly traded, or
 - (B) less than 20% of the voting rights ordinarily exercisable at meetings of shareholders of the corporation, in the case of a corporation the shares of which are not publicly traded,
 - (ii) the acquisition of shares of the corporation by any person in the ordinary course of that person's business as a trader or dealer in securities,
 - (iii) the acquisition of shares of the corporation by any person in the ordinary course of a business carried on by that person that consists of providing, in Canada, venture capital upon terms and conditions not inconsistent with such terms and conditions as may be prescribed by the Minister for the purposes of this subparagraph in relation to any such business, or
 - (iv) the acquisition of control of the corporation by another corporation (in this subparagraph referred to as the "controller"), where it is established that
 - (A) there is in effect an agreement or arrangement, enforceable according to the terms thereof, under which upon the satisfaction of a condition or the happening of an event that it is reasonable to expect will be satisfied or will happen, the corporation will
 - (I) cease to be controlled by the controller, and
 - (II) become controlled by a person or group of persons, with whom or with each of the members of which, as the case may be, the controller is dealing at arm's length, and
 - (B) the control was acquired for the purpose of safeguarding the rights or interests of the controller in respect of
 - (I) a loan made by him, the whole or any part of which is outstanding, or
 - (II) any shares of the corporation that are owned by him and that are, under the agreement or arrangement, to be redeemed by the corporation or purchased by the person or group of persons referred to in subclause (A) (II), and not for any purpose related to the provisions of this Act;
- (f) in determining whether an acquisition of control of a Canadian business enterprise or the establishment of a new business in Canada by a person or persons as a trustee or trustees is an acquisition or establishment by a non-eligible person or by a group of persons a member of which is a non-eligible person, the acquisition shall be deemed to have been made or the business shall be deemed to have been established, as the case may be, by a corporation of which
 - (i) the persons having a beneficial interest in the trust, and
 - (ii) the trustees of the trust, shall be deemed to be the shareholders and the members of the board of directors, respectively.

17. BC Supreme Court Rules

Rule 2-1 — Choosing the Correct Form of Proceeding

- a. Commencing proceedings by notice of civil claim
 - (1) Unless an enactment or these Supreme Court Civil Rules otherwise provide, every

proceeding must be started by the filing of a notice of civil claim under Part 3.

Commencing proceedings by petition or requisition

(2) To start a proceeding in the following circumstances, a person must file a petition or, if Rule 17-1 applies, a requisition:

- (a) the person starting the proceeding is the only person who is interested in the relief claimed, or there is no person against whom relief is sought;
- (b) the proceeding is brought in respect of an application that is authorized by an enactment to be made to the court;
- (c) the sole or principal question at issue is alleged to be one of construction of an enactment, will, deed, oral or written contract or other document;
- (d) the relief, advice or direction sought relates to a question arising in the execution of a trust, or the performance of an act by a person in the person's capacity as trustee, or the determination of the persons entitled as creditors or otherwise to the trust property;
- (e) the relief, advice or direction sought relates to the maintenance, guardianship or property of infants or other persons under disability;
- (f) the relief sought is for payment of funds into or out of court;
- (g) the relief sought relates to land and is for
 - (i) a declaration of a beneficial interest in or a charge on land and of the character and extent of the interest or charge,
 - (ii) a declaration that settles the priority between interests or charges,
 - (iii) an order that cancels a certificate of title or making a title subject to an interest or charge, or
 - (iv) an order of partition or sale;
- (h) the relief, advice or direction sought relates to the determination of a claim of solicitor and client privilege.

b. Estate proceedings

(2.1) Without limiting any other provision of this Rule, a proceeding to which Part 25 applies may be started by

- (a) the filing of a submission for estate grant under Rule 25-3 (2),
- (b) the filing of a submission for resealing under Rule 25-6 (2),
- (c) the filing of a requisition under Rule 25-12 (2) or 25-14 (1) or (2), or
- (d) the filing of a petition under Rule 25-14

18. Rochon (Litigation Guardian) v. British Columbia, 2007 BCSC 1060 (CanLII)

- a. [29]** Upon the request of the Court, counsel looked further into the legislative history of the Crown Proceeding Act, specifically, the recommendations of the Law Reform Commission of British Columbia which preceded that legislation. In its Report on Civil Rights: Part 1 – Legal Position of the Crown, (1972), the Law Reform Commission reviewed the common law of Crown immunity, analyzed various options, and made a number of recommendations.

(30) With respect to the identity of the Crown, the Commission wrote at page 9: The word “Crown” may be confusing to some. In law, the Crown is a term of art, the meaning of which bears little resemblance to the chattel that sits in the Tower of London to be gazed at by sightseers. The “Crown” is a description for Her Majesty Elizabeth II in her legal personage as Sovereign.

The expression describes “...corporate legal entity to which the law ascribes the legal rights and obligations of the various semi-sovereign units of government created by the BNA Act” It is necessary to speak of the Crown in the right of “the particular unit of government”. Therefore, the for our purposes is Her Majesty in the right of BC,...

19. O'Donohue v. Canada, 2003 CanLII 41404(ON SC)

- a. [31] By the Statute of Westminster, 1931 (U.K.) 22 and 23 Geo. 5, c.4 the United Kingdom agreed that it would no longer impose British statutes on the various dominions without their accord. It also provided that the British monarch would continue to be the monarch of various Commonwealth countries including Canada. In order to recognize that the United Kingdom would no longer impose British statutes on the dominions, but also to ensure that the rules of succession which had previously been imposed by the United Kingdom on those Commonwealth countries continued to be consistent, the British Parliament set out in the preamble to the Statute of Westminster

20. Blackstone Commentaries BOOK 1, CHAPTER 1 Of the Absolute Rights of Individuals

- a. The objects of the laws of England are so very numerous and extensive, that, in order to consider them with any tolerable ease and perspicuity, it will be necessary to distribute them methodically, under proper and distinct heads; avoiding as much as possible divisions too large and comprehensive on the one hand, and too trifling and minute on the other; both of which are equally productive of confusion.

Now, as municipal law is a rule of civil conduct, commanding what is right, and prohibiting what is wrong; or, as Cicero,¹ and after him our Bracton,² has expressed it, *sanctio justa, jubens honesta et prohibens contraria*; it follows, that the primary and principal objects of the law are rights, and wrongs. In the prosecution therefore of these commentaries, I shall follow this very simple and obvious division; and shall in the first place consider the rights that are commanded, and secondly the wrongs that are forbidden by the laws of England.

The objects of the laws of England falling into this fourfold division, the present commentaries will therefore consist of the four following parts: 1. The rights of persons; with the means whereby such rights may be either acquired or lost. 2. The rights of things; with the means also of acquiring and losing them.

We are now, first, to consider the rights of persons; with the means of acquiring and losing them.

Now the rights of persons that are commanded to be observed by the municipal law are to two sorts; first, such as are due from every citizen, which are usually called civil duties; and, secondly, such as belong to him, which is the more popular acceptation of rights or *jura*. Both may indeed be comprised in this latter division; for as all social duties are of a relative nature, at the same duties are of a relative nature, at the same time that they are due from one man, or set of men, they must also be due to another. But I apprehend it will be more clear and easy, to consider many of them as duties required from, rather than as rights belonging to, particular persons. Thus, for instance, allegiance is usually, and therefore most easily, considered as the duty of the people, and protection as the duty of the magistrate; and yet they are, reciprocally, the rights as well as duties of each other. Allegiance is the right of the magistrate, and protection the right of the people.

Persons also are divided by the law into either natural persons, or artificial. Natural persons are such as the God of nature formed us: artificial are such as created and devised by human laws for the purposed of society and government; which are called corporations or bodies politic.

The rights of persons considered in their natural capacities are also of two sorts, absolute, and relative. Absolute, which are such as appertain and belong to particular men, merely as individuals or single persons: relative, which are indigent to them as members of society, and standing in various relations to each other. The first, that is, absolute rights, will be the subject of the present chapter.

21. The first part of the Institutes of the laws of England,
or, A commentary upon Littleton : not the name of the author only, but of the law itself
- a. Sec 447 In releases of all the right which a man hath in certain lands, it behoveth him to whom the release is made* in any case, that he hath th freehold in the lands in deed and in law, at the time of release made, for every case where he to whom the release is made hath the freehold in deed, or law, at the time of release, there the release is good.
22. Columbia Law Review Vol 5 1905-12-01
- a. Can There Be Disseisin without a Claim of the Freehold?
Disseisin, however, is an entry into any lands or tenements and an ouster of him who has the freehold, Litt. sec. 279, and always implies a wrong. Co. Litt. 153 b. The theory of the common law was that seisin passed from the party ousted to the usurper. Litt.sec. 385, 387. This is apparent from the wording of the Stat. 32 Hen.VIII c. 33: "Where divers persons have heretofore, by strength, and without title, entered into lands, and wrongfully disseised the rightful owner, and so being seised by disseisin, have thereof died seized, etc." See also Taylor v. Horde (1757) i Burr. 60, 107, Io8. Seisin is a possession claiming an estate of freehold.
23. Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission), [1990] 1 SCR 425, 1990 CanLII 135 (SCC)
- a. This difference flows from the nature of corporate existence. While individuals as a rule have full legal capacity by the operation of law alone, artificial persons are creatures of the state and enjoy civil rights and powers only upon the approval of statutory authorities.
24. Harvard Law Review, Volume 28. 1915-03-01
- a. Is Cestui que Trust's Right in Rem or in Personam?
 - b. the law has given the vendor in market overt, or the thief or finder of a promissory note, the power to pass a title which he himself does not possess. So in the case of trusts, in order to secure acquisitions of property equity concedes to the holder of the legal title, who stands before the world as owner, the power to clothe a purchaser for value without notice with a complete title. Where is the anomaly in saying that cestui's rights are in rem? No doubt the cestui has a personal right against the trustee that he perform the trust in accordance with its terms, but it is submitted that primarily he has a real right in the res itself.
 - c.
25. Saugestad v. Saugestad, 2006 BCSC 1839 (CanLII)
- a. The requirements for the creation of an express trust include the three certainties: the language of the settlor must be imperative, the subject matter or trust property must be certain, and the objects of the trust must be certain: see Waters, Law of Trusts in Canada, supra, at 85, citing Knight v. Knight (1840), 3 Beav. 148, 49 E.R. 58. A self-declaration of trust can validly constitute a trust, provided there is clear evidence of the intention to do so; specific language declaring oneself a trustee is not required: see Waters, supra at 150-151; Watt v. Watt Estate, (1987) 49 Man.R. (2d) 317, [1988] 1 W.W.R. 534 (C.A.); Paul v. Constance, [1977] 1 W.L.R. 527, [1977] 1 All E.R. 195 (C.A.)
26. O'Dell v. Hastie 1968 513 SK QB
- a. "A trustee, in the proper sense of the term, is one who holds the legal title to property for the benefit of another, known as the Cestui Que trust. All that is necessary to establish the relation of trustee and Cestui Que trust is to prove that the legal title was in the former and the equitable title in the latter. Being proved, no matter how, the relation of trustee and cestui que trust is thereby established."
27. Smith v. Royal Trust Corporation, et al, 2003 BCSC 1606 (CanLII)
- a. The purpose of the Trust and Settlement Variation Act is to safeguard the interests of children and other contingent beneficiaries.

28. The TRUSTEE ACT [RSBC 1996] CHAPTER 464

a. Variation of trustee investments

22 (1) A trustee in his or her discretion may

(a) call in trust funds invested in securities other than those authorized by this Act and invest them in securities authorized by this Act, and

(b) vary any investments authorized by this Act.

(2) A trustee is not liable for a breach of trust merely because the trustee continues to hold an investment that since its acquisition by the trustee has ceased to be one authorized by the instrument of trust or by this Act.

(3) If a trustee has improperly advanced trust money on a mortgage that would at the time of the investment have been a proper investment in all respects for a less sum than was actually advanced, the security is deemed to be an authorized investment for the smaller sum, and the trustee is only liable to make good the excess amount advanced, with interest.

b. Vesting of trust property in trustees

29 (1) If a deed by which a new trustee is appointed to perform a trust contains a declaration by the appointor to the effect that an estate or interest in land subject to the trust, or in a chattel subject to the trust, or the right to recover and receive a debt or other thing in action subject to the trust, vests in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration operates, without a conveyance or assignment, to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest or right.

(2) If a deed by which a retiring trustee is discharged under this Act contains a declaration referred to in this section by the retiring and continuing trustees, and by any other person, if any, empowered to appoint trustees, that declaration operates, without a conveyance or assignment, to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest or right to which the declaration relates.

(3) This section does not extend to land conveyed by way of mortgage for securing money subject to the trust, or to a share, stock, annuity or property that is only transferable in books kept by a company or other body, or in a manner directed under any Act of the Legislature.

(4) For the purposes of registration of the deed in a land title office, the persons making the declaration are deemed to be the conveying parties, and the conveyance is deemed to be made by them under a power conferred by this Act.

(5) This section applies only to deeds executed after July 1, 1905.

c. Removal of trustees on application

30 A trustee or receiver appointed by any court may be removed and a trustee, trustees or receiver substituted in place of him or her, at any time on application to the court by any trust beneficiary who is not under legal disability, with the consent and approval of a majority in interest and number of the trust beneficiaries who are also not under legal disability.

d. Power of court to appoint new trustees

31 If it is expedient to appoint a new trustee and it is found inexpedient, difficult or impracticable to do so without the assistance of the court, it is lawful for the court to make an order appointing a new trustee or trustees, whether there is an existing trustee or not at the time of making the order, and either in substitution for or in addition to any existing trustees.

e. Persons who may apply for orders

36 (1) An order under any of the above provisions for the appointment of a new trustee, or concerning land, stock or a chose in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock or chose in action,

whether under disability or not, or on the application of a person duly appointed as a trustee of it.

(2) An order under any of the above provisions concerning land, stock or a chose in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

f. Order for vesting estate on refusal of trustee to convey or release

59 (1) If a person is jointly or solely seised or possessed of any land or entitled to a contingent right in it on a trust, and a demand has been made on the trustee by a person entitled to require a conveyance or assignment of the land, or his or her duly authorized agent, requiring the trustee to convey or assign it, or to release the contingent right, the court, if satisfied that the trustee has wilfully refused or neglected to convey or assign the land for 28 days after the demand, may make an order

(a) vesting the land in the person, in the manner and for the estate that the court directs, or

(b) releasing the contingent right in the manner the court directs.

(2) The order has the same effect as if the trustee had duly executed a conveyance or assignment of the land, or a release of the right, in the same manner and for the same estate.

29. 6 Ann. c. 18

a. The statutes at large from Magna Charta to the end of the last parliament vol 9 CAP. XVIII.

b. An Act for the more effectual Discovery of the Death of Persons pretended to be alive, to the Prejudice of those who claim Estates after their Deaths.

I. Where AS divers Persons, as Guardians and Trustees for Infants, and Husbands in Right of their Wives, and other Persons having Estates or Interests determinable upon a Life or Lives, have continued to receive their Rents and Profits of such Lands after the Determination of their said particular Estates or Interests : And whereas the Proof of the Death of the Persons, on whose Lives such particular Estates or Interests depended, is very difficult, and several Persons have been, and may be thereby defrauded : For Remedy whereof, and for preventing such fraudulent Practices, Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That any Person or Persons who hath or shall have any Claim or Demand in or to any Remainder, Reversion, or Expectancy in or to any estate after the death of any person within age, married women, or any other such person whatsoever, upon affidavit made in the high court of chancery. By the person so claiming such estate, of his or her title, and that he or she hath cause to believe that such minor, married women or other Person is dead, and that his or her Death is concealed by such Guardian, Trustee, Husband, or any other Person, shall and may once a Year, if the Person aggrieved shall think fit, move the Lord Chancellor, Keeper, or Commissioners for the Custody of the Great Seal of Great Britain for the Time being, to order, and they are hereby authorized and required to order such Guardian, Trustee, Husband, or other Person, concealing or suspected to conceal such Person, at such Time and Place as the said Court shall direct, on personal or other due Service of such Order, to produce and shew to such Person and Persons, (not exceeding two) as shall in such Order be named by the Party or Parties prosecuting such Order, such Minor, married Woman, or other Persons aforesaid ; and if such Guardian, Trustee, Husband, or such other Person, as aforesaid, shall refuse or

neglect to produce or shew such Infant, married Woman, or such other Person, on whose Life any such Estate doth depend, according to the Directions of the said Order, That then the Court of Chancery is hereby authorized and required to order such Guardian, Trustee, Husband, or other Person, to produce such Minor, married Woman, or other person concealed, in the said Court of Chancery, or otherwise before Commissioners to be appointed by the said Court, at such Time and Place as the Court shall direct, two of which Commissioners shall be nominated by the Party or Parties prosecuting such Order, at his, her,, or their Costs, and Charges ; and in case such Guardian, Trustee, Husband, or other Person, shall refuse or neglect to produce such Infant, married Woman, or other Person so concealed, in the Court of Chancery, or before such Commissioners, whereof Return shall be made by such Commissioners, and that Return filed in the Petty Bag Office, in either or any of the said Cases, the said Minor, married Woman, or such other Person so concealed, shall be taken to be dead, and it shall be lawful for any Person claiming any Right, Title or In interest in Remainder or Reversion, or otherwise after the Death of such Infant, married Woman, or such other Persons so concealed, as aforesaid, to enter upon such Lands, Tenements and Hereditaments, as if such Infant, married Woman, or other Person so concealed, were actually dead.

II. And be it further enacted by the Authority aforesaid. That if it shall appear to the said Court by affidavit, that such Minor, married Woman, or other Person, for whose Life such Estate is holden, is, or lately was at some certain Place beyond the Seas in the said Affidavit to be mentioned, it shall and may be lawful for the Party or Parties prosecuting such Order, as aforesaid, at his, her, or their Cost and Charges, to fend over one or both the said Persons appointed by the said Order, to view such Minor, married Woman, or other Person, for whose Life any such Estate is Holden ; and in case such Guardian, Trustee, Husband, or other Person concealing or suspected to conceal such Persons as aforesaid, shall refuse or neglect to produce or procure to be produced to such Person or Persons, a personal View of such Infant, married Woman, or other Person, for whose Life any such Estate is holden. That then and in such Case such Person or Persons are hereby required to make a true Return of such Refusal or Neglect to the Court of Chancery, which Return shall be filed in the Petty Bag Office, and thereupon such Minor, married Woman, or other Person, for whose Life any such Estate is holden, shall be taken to be dead; and it shall be lawful for any Person claiming any Right, Title, or Interest, in Remainder, Reversion, or otherwise after the Death of such Infant, married Woman, or other Person, for whose Life any such Estate is holden, to enter upon such Lands, Tenements, and Hereditaments, as if such Infant, married Woman, or other Person, for whose Life any such Estate is holden, were actually dead.

III. Provided always. That if it shall afterwards appear upon Proof, in any Action to be brought, that such Infant, married Woman, or other Person, for whose Life any such Estate is holden, were alive at the Time of such Order made. That then it shall be lawful for such Infant, married Woman, Guardian, or Trustee, or other Person having any Estate or Interest, determinable upon such Life, to reenter upon the said Lands, Tenements, or Hereditaments, and for such Infant, married Woman, or other Person, having any Estate or Interest determinable upon such Life, their Executors, Administrators or Assigns, to maintain an Action against those who, since the said Order, received the Profits of such Lands, Tenements, or Hereditaments, or their Executors or Administrators, and therein to recover full Damages for the Profits of the same received, from the Time that such Infant, married Woman, or other Person, having any Estate or Interest determinable upon such Life, were ousted of the Possession of such Lands, Tenements, or Hereditaments.

IV. Provided always. That if any such Guardian, Trustee, Husband, or other Person or Persons, holding or having any Estate or Interest determinable upon the Life or Lives of any other Person or Persons Shall by Affidavit or otherwise, to the Satisfaction of the said Court of Chancery, make appear. That he, she, or they have used his, her, or their utmost Endeavors to procure such Infant, married Woman, or other Person or Persons, on whose Life or Lives such Estate or Interest doth depend, to appear in the said Court of Chancery, or elsewhere, according to the Order of the said Court in that Behalf made, and that he, she, or they cannot procure or compel such Infant, married Woman, or other Person or Persons so to appear, and that such Infant, married Woman, or other Person or Persons, on whose Life or Lives such Estate or Interest doth depend, is, are, or were living at the Time of such Return made and filed as aforesaid, then it shall be lawful for such Person or Persons to continue in the Possession of such Estate, and receive the Rents and Profits thereof for and during the Infancy of such Infant, and the Life or Lives of such married Woman, or other Person or Persons, on whose Life or Lives such Estate or Interest doth or shall depend, as fully as he, she, or they might have done if this Act had not been made.

V. And be it further enacted by the Authority aforesaid. That every Person who, as Guardian or Trustee for any Infant, and every Husband seized in Right of his Wife only, and every other Person having any Estate determinable upon any Life or Lives, who after the Determination of such particular Estates or Interests, without the express Consent of him, her, or them, who are or shall be next and immediately untitled upon and after the Determination of such particular Estates or Interests, shall hold over and continue in Possession of any Manors, Messages, Lands, Tenements, or Hereditaments, shall be and are hereby adjudged to be Trespassers ; and that every Person and Persons, his, her, and their Executors and Administrators, who are or shall be intitled to any such Manors, Messuages, Lands, Tenements, and Hereditaments, upon or after the Determination of such particular Estates or Interests, shall and may recover in Damages against every such Person or Persons so holding over as aforesaid, and against his, her, or their Executors, or Administrators, the full Value of the Profits received during such wrongful Possession as aforesaid,

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Person claiming Estate in Remainder, &c. after Death of Minor, married Woman, &c. On Affidavit, &c. that hath cause to believe such Minor, &c. is dead, Lord Chancellor to cause such Minor, &c. to be produced, &c. Guardian, &c. refusing to produce such Infant, &c. Party so concealed to be taken to be dead, and Claimant may enter on Land, Ac. On Affidavit that Minor, &c. is beyond Sea, Claimant may fend over Persons to view such Minor &c. If Infant, &c. alive, after Order made, such Infant, &c. may re-enter. If Guardian, &c. prove that he hath used his Endeavours to produce such Infant to appear, and that he was then living, &c. Guardian to continue in Possession, &c. Guardian, &c. holding Estates after Determination of Life of Minor, &c. adjudged Trespassers. Heirs, &c. may recover Damages.

31. Bill of Rights 1688

a. X1Whereas the Lords Spirituall and Temporall and Comons assembled at Westminster lawfully fully and freely representing all the Estates of the People of this Realme did upon the thirteenth day of February in the yeare of our Lord one thousand six hundred eighty eight present unto their Majesties then called and known by the Names and Stile of William and Mary Prince and Princesse of Orange being present in their proper Persons a

certaine Declaration in Writeing made by the said Lords and Comons in the Words followingthe Crowne herein specified and contained to the utmost of their Powers with their Lives and Estates against all Persons whatsoever that shall attempt any thing to the contrary

the Crowne herein specified and contained to the utmost of their Powers with their Lives and Estates against all Persons whatsoever that shall attempt any thing to the contrary. And whereas it hath beene found by Experience that it is inconsistent with the Safety and Welfaire of this Protestant Kingdome to be governed by a Popish Prince F2... the said Lords Spirituall and Temporall and Commons doe further pray that it may be enacted That all and every person and persons that is are or shall be reconciled to or shall hold Communion with the See or Church of Rome or shall professe the Popish Religion F3... shall be excluded and be for ever uncapeable to inherit possesse or enjoy the Crowne and Government of this Realme and Ireland and the Dominions thereunto belonging or any part of the same or to have use or exercise any Regall Power Authoritie or Jurisdiction within the same [X5

And in all and every such Case or Cases the People of these Realmes shall be and are hereby absolved of their Allegiance] And the said Crowne and Government shall from time to time descend to and be enjoyed by such person or persons being Protestants as should have inherited and enjoyed the same in case the said person or persons soe reconciled holding Communion or Professing F4... as aforesaid were naturally dead

32. In The Matter of John Horvath, 2000 BCSC 117

- a. [26] Counsel were unable to find a Canadian case on point. However, in Law of Trusts in Canada, 2nd ed., at p. 294, Professor D.W. M. Waters observes:

Any obligation between parties, the creation of which appears to have been the outcome of informed and freely consenting minds, will be held void if one of the parties was under a fundamental misapprehension or actual duress, and voidable if fraud or undue influence was perpetrated by one party upon the other. The same rules must apply to trusts. In this connection mistake is rare, but it can happen. The plaintiff, called to his lawyer's office to sign a number of documents including an inter vivos trust deed, may have intended to reject the trust deed because it did not contain the terms he now wanted, but in the event was talking as he was signing the various documents, and in error signed the voluntary trust deed. It is going to be a heavy burden of proof that the plaintiff has to discharge when he later challenges the validity of the instrument, but, if he is able to demonstrate his true intent and the mistake is really fundamental, the trust deed will be declared void.

[27] Professor Waters relies on "the response of equity".

[28] In The Law of Trusts, 4th ed., at para. 333.4 (a U.S.A. text), the authors Scott (Emeritus Professor, Harvard) and Fratcher (Emeritus Professor, University of Missouri) state:

We have seen that where a power of revocation is omitted by mistake from the trust instrument the settlor can have the instrument reformed and can revoke the trust. Where the creation of the trust itself was induced by mistake, the settlor may rescind the disposition. The applicable principles are the same as those that apply in the case of an outright conveyance. Where the settlor receives consideration for the creation of a trust, a unilateral mistake made by him is not ordinarily a sufficient ground for rescission, as it is not in the case of a contract or sale. On the other hand, where the settlor receives no consideration for the creation of the trust, as is usually the case, a unilateral mistake is

ordinarily a sufficient ground for rescission, as it is in the case of an outright gift. It is immaterial that the beneficiaries of the trust did not induce the mistake or know of it or share it. It is immaterial whether the mistake was a mistake of fact or a mistake of law.

[29] In *Law Relating to Trusts and Trustees*, 15th ed., at p. 246, D.J. Hayton of the Inner Temple and Lincoln's Inn, and Professor of Law at King's College, observed:

Cancellation on the ground of ignorance, mistake, fraud, or undue influence is more frequently sought in the case of voluntary settlements than those made for consideration. The remedy of cancellation is not, however, confined to voluntary settlements, although the court will more readily cancel a settlement for which no consideration was given than one based on value.

It is now settled that where the settlor invokes the aid of the court to set aside a voluntary settlement the onus of showing mistake, fraud or undue influence is upon him, except:

- (1) where the provisions of the settlement are so absurd and improvident as to raise a presumption that no sane person would have agreed to them knowingly, and
- (2) where the beneficiary occupied at the date of the settlement a fiduciary position towards the settlor, in which case there is a strong *prima facie* presumption of undue influence.

The absence of a power of revocation will not operate to transfer the onus of proof from the settlor to the beneficiary.

On the other hand, where the beneficiaries set up the deed against the settlor the onus is on them to show that he thoroughly understood it.

[30] The law, as I understand it, is that in order for there to be revocation, the mistake must be (as here) in respect to the legal effect and nature of the transaction itself and not merely to the consequences. I take that to be the principle upon which *Gibbon v. Mitchell et al*, [1990] 3 All E.R. 338 (Chancery Division) was decided.

33. Settled Land Act 1925

a. 1 What constitutes a settlement.

(1) Any deed, will, agreement for a settlement or other agreement, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, after the commencement of this Act, stands for the time being—

(i) limited in trust for any persons by way of succession; or

(ii) limited in trust for any person in possession—

(a) for an entailed interest whether or not capable of being barred or defeated;

(b) for an estate in fee simple or for a term of years absolute subject to an executory limitation, gift, or disposition over on failure of his issue or in any other event;

(c) for a base or determinable fee [F1 (other than a fee which is a fee simple absolute by virtue of section 7 of the Law of Property Act 1925)] or any corresponding interest in leasehold land;

(d) being an infant, for an estate in fee simple or for a term of years absolute; or

(iii) limited in trust for any person for an estate in fee simple or for a term of years

absolute contingently on the happening of any event; or

(iv). F2

(v) charged, whether voluntarily or in consideration of marriage or by way of family arrangement, and whether immediately or after an interval, with the payment of any rentcharge for the life of any person, or any less period, or of any capital, annual, or periodical sums for the portions, advancement, maintenance, or otherwise for the benefit of any persons, with or without any terms of years for securing or raising the same; creates or is for the purposes of this Act a settlement and is in this Act referred to as a settlement, or as the settlement, as the case requires:

Provided that, where land is the subject of a compound settlement, references in this Act to the settlement shall be construed as meaning such compound settlement, unless the context otherwise requires.

(2) Where an infant is beneficially entitled to land for an estate in fee simple or for a term of years absolute and by reason of an intestacy or otherwise there is no instrument under which the interest of the infant arises or is acquired, a settlement shall be deemed to have been made by the intestate, or by the person whose interest the infant has acquired.

(3) An infant shall be deemed to be entitled in possession notwithstanding any subsisting right of dower (not assigned by metes and bounds) affecting the land, and such a right of dower shall be deemed to be an interest comprised in the subject of the settlement and coming to the dowress under or by virtue of the settlement. Where dower has been assigned by metes and bounds, the letters of administration or probate granted in respect of the estate of the husband of the dowress shall be deemed a settlement made by the husband.

(4) An estate or interest not disposed of by a settlement and remaining in or reverting to the settlor, or any person deriving title under him, is for the purposes of this Act an estate or interest comprised in the subject of the settlement and coming to the settlor or such person under or by virtue of the settlement.

(5) Where—

(a) a settlement creates an entailed interest which is incapable of being barred or defeated, or a base or determinable fee, whether or not the reversion or right of reverter is in the Crown, or any corresponding interest in leasehold land; or

(b) the subject of a settlement is an entailed interest, or a base or determinable fee, whether or not the reversion or right of reverter is in the Crown, or any corresponding interest in leasehold land; the reversion or right of reverter upon the cesser of the interest so created or settled shall be deemed to be an interest comprised in the subject of the settlement, and limited by the settlement.

(6) Subsections (4) and (5) of this section bind the Crown.

[F3(7) This section does not apply to land held upon trust for sale.]

b. 2 What is settled land.

Land which is or is deemed to be the subject of a settlement is for the purposes of this Act settled land, and is in relation to the settlement referred to in this Act as the settled land.

c. 3 Duration of settlements.

Land [F1 which has been subject to a settlement which is a settlement for the purposes of this Act] shall be deemed for the purposes of this Act to remain and be settled land, and the settlement shall be deemed to be a subsisting settlement for the purposes of this Act so long as—

(a) any limitation, charge, or power of charging under the settlement subsists, or is capable of being exercised; or

(b) the person who, if of full age, would be entitled as beneficial owner to have that land vested in him for a legal estate is an infant.

d. 5 Contents of vesting deeds.

(1) Every vesting deed for giving effect to a settlement or for conveying settled land to a tenant for life or statutory owner during the subsistence of the settlement (in this Act referred to as a “principal vesting deed”) shall contain the following statements and particulars, namely:—

(a) A description, either specific or general, of the settled land;

(b) A statement that the settled land is vested in the person or persons to whom it is conveyed or in whom it is declared to be vested upon the trusts from time to time affecting the settled land;

(c) The names of the persons who are the trustees of the settlement;

(d) Any additional or larger powers conferred by the trust instrument relating to the settled land which by virtue of this Act operate and are exercisable as if conferred by this Act on a tenant for life;

(e) The name of any person for the time being entitled under the trust instrument to appoint new trustees of the settlement.

(2) The statements or particulars required by this section may be incorporated by reference to an existing vesting instrument, and, where there is a settlement subsisting at the commencement of this Act, by reference to that settlement and to any instrument whereby land has been conveyed to the uses or upon the trusts of that settlement, but not (save as last aforesaid) by reference to a trust instrument nor by reference to a disentailing deed.

(3) A principal vesting deed shall not be invalidated by reason only of any error in any of the statements or particulars by this Act required to be contained therein.

e. 7 Procedure on change of ownership.

(1) If, on the death of a tenant for life or statutory owner, or of the survivor of two or more tenants for life or statutory owners, in whom the settled land was vested, the land remains settled land, his personal representatives shall hold the settled land on trust, if and when required so to do, to convey it to the person who under the trust instrument or by virtue of this Act becomes the tenant for life or statutory owner and, if more than one, as joint tenants.

(2) If a person by reason of attaining full age becomes a tenant for life for the purposes of this Act of settled land, he shall be entitled to require the trustees of the settlement, personal representatives, or other persons in whom the settled land is vested, to convey the land to him.

(3) If a person who, when of full age, will together with another person or other persons constitute the tenant for life for the purposes of this Act of settled land attains that age, he shall be entitled to require the tenant for life, trustees of the settlement, personal representatives or other persons in whom the settled land is vested to convey the land to him and the other person or persons who together with him constitute the tenant for life as joint tenants.

(4) If by reason of forfeiture, surrender, or otherwise the estate owner of any settled land ceases to have the statutory powers of a tenant for life and the land remains settled land, he shall be bound forthwith to convey the settled land to the person who under the trust instrument, or by virtue of this Act, becomes the tenant for life or statutory owner and, if more than one, as joint tenants.

(5) If any person of full age becomes absolutely entitled to the settled land (whether beneficially, or as personal representative, or as [F1 trustee of land], or otherwise) free from all limitations, powers, and charges taking effect under the settlement, he shall be entitled to require the trustees of the settlement, personal representatives, or other persons in whom the settled land is vested, to convey the land to him, and if more persons than one being of full age become so entitled to the settled land they shall be entitled to

require such persons as aforesaid to convey the land to them as joint tenants.

f. 8 Mode and costs of conveyance, and saving of rights of personal representatives and equitable chargees.

(1) A conveyance by personal representatives under either of the last two preceding sections may be made by an assent in writing signed by them which shall operate as a conveyance.

(2) Every conveyance under either of the last two preceding sections shall be made at the cost of the trust estate.

(3) The obligations to convey settled land imposed by the last two preceding sections are subject and without prejudice—

(a) where the settlement is created by a will, to the rights and powers of the personal representatives for purposes of administration; and

(b) in any case, to the person on whom the obligation is imposed being satisfied that provision has been or will be made for the payment of any unpaid death duties in respect of the land or any interest therein from which he is accountable, and any interest and costs in respect of such duties, or that he is otherwise effectually indemnified against such duties, interest and costs.

(4) Where the land is or remains settled land a conveyance under either of the last two preceding sections shall—

(a) if by deed, be a principal vesting deed; and

(b) if by an assent, be a vesting assent, which shall contain the like statements and particulars as are required by this Act in the case of a principal vesting deed.

(5) Nothing contained in either of the last two preceding sections affects the right of personal representatives to transfer or create such legal estates to take effect in priority to a conveyance under either of those sections as may be required for giving effect to the obligations imposed on them by statute.

(6) A conveyance under either of the last two preceding sections, if made by deed, may contain a reservation to the person conveying of a term of years absolute in the land conveyed, upon trusts for indemnifying him against any unpaid death duties in respect of the land conveyed or any interest therein, and any interest and costs in respect of such duties.

(7) Nothing contained in either of the last two preceding sections affects any right which a person entitled to an equitable charge for securing money actually raised, and affecting the whole estate the subject of the settlement, may have to require effect to be given thereto by a legal mortgage, before the execution of a conveyance under either of those sections.

g. 9 Procedure in the case of settlements and of instruments deemed to be trust instruments.

(1) Each of the following settlements or instruments shall for the purposes of this Act be deemed to be a trust instrument, and any reference to a trust instrument contained in this Act shall apply thereto, namely:—

(i) An instrument executed, or, in case of a will, coming into operation, after the commencement of this Act which by virtue of this Act is deemed to be a settlement;

(ii) A settlement which by virtue of this Act is deemed to have been made by any person after the commencement of this Act;

(iii) An instrument inter vivos intended to create a settlement of a legal estate in land which is executed after the commencement of this Act, and does not comply with the requirements of this Act with respect to the method of effecting such a settlement; and

(iv) A settlement made after the commencement of this Act (including a settlement by the will of a person who dies after such commencement) of any of the following interests—

(a) an equitable interest in land which is capable, when in possession, of subsisting at law; or

(b)an entailed interest; or

(c)a base or determinable fee or any corresponding interest in leasehold land, but only if and when the interest settled takes effect free from all equitable interests and powers under every prior settlement (if any).

(2)As soon as practicable after a settlement, or an instrument which for the purposes of this Act is deemed to be a trust instrument, takes effect as such, the trustees of the settlement may, and on the request of the tenant for life or statutory owner shall, execute a principal vesting deed, containing the proper statements and particulars, declaring that the legal estate in the settled land shall vest or is vested in the person or persons therein named, being the tenant for life or statutory owner, and including themselves if they are the statutory owners, and such deed shall, unless the legal estate is already so vested, operate to convey or vest the legal estate in the settled land to or in the person or persons aforesaid and, if more than one, as joint tenants.

(3)If there are no trustees of the settlement, then (in default of a person able and willing to appoint such trustees) an application under this Act shall be made to the court for the appointment of such trustees.

(4)The provisions of the last preceding section with reference to a conveyance shall apply, so far as they are applicable, to a principal vesting deed under this section.

h. 10 Procedure on acquisition of land to be made subject to a settlement.

i. (1)Where after the commencement of this Act land is acquired with capital money arising under this Act or in exchange for settled land, or a rentcharge is reserved on a grant of settled land, the land shall be conveyed to, and the rentcharge shall by virtue of this Act become vested in, the tenant for life or statutory owner, and such conveyance or grant is in this Act referred to as a subsidiary vesting deed: Provided that, where an instrument is subsisting at the commencement of this Act, or is made or comes into operation after such commencement, by virtue of which any money or securities are liable under this Act, or the Acts which it replaces, or under a trust or direction contained in the instrument, to be invested in the purchase of land to be conveyed so as to become settled land, but at the commencement of this Act, or when such instrument is made or comes into operation after such commencement, as the case may be, there is no land in respect of which a principal vesting deed is capable of being executed, the first deed after the commencement of this Act by which any land is acquired as aforesaid shall be a principal vesting deed and shall be framed accordingly.

j. 11 As to contracts for the settlement of land.

(1)A contract made or other liability created or arising after the commencement of this Act for the settlement of land—

(i)by or on the part of an estate owner; or

(ii)by a person entitled to—

(a)an equitable interest which is capable when in possession of subsisting at law; or

(b)an entailed interest; or

(c)a base or determinable fee or any corresponding interest in leasehold land; shall, but in cases under paragraph (ii) only if and when the interest of the person entitled takes effect free from all equitable interests and powers under every prior settlement, if any, be deemed an estate contract within the meaning of the M1 Land Charges Act, 1925, and may be registered as a land charge accordingly, and effect shall be given thereto by a vesting deed and a trust instrument in accordance with this Act.

(2)A contract made or other liability created or arising before the commencement of this Act to make a settlement of land shall be deemed to be sufficiently complied with if effect is given thereto by a vesting deed and a trust instrument in accordance with this Act

k. 12 Power to make vesting orders as to settled land.

(1) If—

(a) any person who is bound under this Part of this Act to execute a conveyance, vesting deed or vesting assent or in whom settled land is wrongly vested refuses or neglects to execute the requisite conveyance, vesting deed or vesting assent within one month after demand in writing; or

(b) any such person is outside the United Kingdom, or cannot be found, or it is not known whether he is alive or dead; or

(c) for any reason the court is satisfied that the conveyance, vesting deed or vesting assent cannot be executed, or cannot be executed without undue delay or expense; the court may, on the application of any person interested, make an order vesting the settled land in the tenant for life or statutory owner or person, if any, of full age absolutely entitled (whether beneficially or as personal representative or [F1 trustee of land] or otherwise), and, if the land remains settled land, the provisions of this Act relating to a principal vesting deed or a subsidiary vesting deed, as the case may be, shall apply to any order so made and every such order shall contain the like statements and particulars.

(2) No stamp duty shall be payable in respect of a vesting order made in place of a vesting or other assent.

l. 13 Dispositions not to take effect until vesting instrument is made.

Where a tenant for life or statutory owner has become entitled to have a principal vesting deed or a vesting assent executed in his favour, then until a vesting instrument is executed or made pursuant to this Act in respect of the settled land, any purported disposition thereof inter vivos by any person, other than a personal representative (not being a disposition which he has power to make in right of his equitable interests or powers under a trust instrument), shall not take effect except in favour of a purchaser of a legal estate [F1 without notice of such tenant for life or statutory owner having become so entitled as aforesaid.] but, save as aforesaid, shall operate only as a contract for valuable consideration to carry out the transaction after the requisite vesting instrument has been executed or made, and a purchaser of a legal estate shall not be concerned with such disposition unless the contract is registered as a land charge. [F2 Nothing in this section affects the creation or transfer of a legal estate by virtue of an order of the court or the Minister or other competent authority.]

m. 16 Enforcement of equitable interests and powers against estate owner.

(1) All equitable interests and powers in or over settled land (whether created before or after the date of any vesting instrument affecting the legal estate) shall be enforceable against the estate owner in whom the settled land is vested (but in the case of personal representatives without prejudice to their rights and powers for purposes of administration) in manner following (that is to say):—

(i) The estate owner shall stand possessed of the settled land and the income thereof upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the equitable interests and powers affecting the settled land or the income thereof of which he has notice according to their respective priorities;

(ii) Where any person of full age becomes entitled to require a legal estate in the settled land to be vested in him in priority to the settlement, by reason of a right of reverter, statutory or otherwise, or an equitable right of entry taking effect, or on the ground that his interest ought no longer to be capable of being over-reached under the powers of this Act, the estate owner shall be bound, if so requested in writing, to transfer or create such legal estate as may be required for giving legal effect to the rights of the person so entitled;

(iii) Where—

(a) any principal sum is required to be raised on the security of the settled land, by virtue of any trust, or by reason of the exercise of an equitable power affecting the settled land,

or by any person or persons who under the settlement is or are entitled or together entitled to or has or have a general power of appointment over the settled land, whether subject to any equitable charges or powers of charging subsisting under the settlement or not; or (b) the settled land is subject to any equitable charge for securing money actually raised and affecting the whole estate the subject of the settlement; the estate owner shall be bound, if so requested in writing, to create such legal estate or charge by way of legal mortgage as may be required for raising the money or giving legal effect to the equitable charge:

(5) Save as hereinbefore expressly provided, no legal estate shall, so long as the settlement is subsisting, be transferred or created by the estate owner for giving effect to any equitable interest or power under the settlement.

(6) If a question arises or a doubt is entertained whether any and what legal estate ought to be transferred or created pursuant to this section, an application may be made to the court for directions as hereinafter provided.

(7) If an estate owner refuses or neglects for one month after demand in writing to transfer or create any such legal estate, or if by reason of his being outside the United Kingdom, or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the transaction cannot otherwise be effected, or cannot be effected without undue delay or expense, the court may, on the application of any person interested, make a vesting order transferring or creating the requisite legal estate.

n. 17 Deed of discharge on termination of settlement.

(1) Where the estate owner of any settled land holds the land free from all equitable interests and powers under a trust instrument, the persons who in the last or only principal vesting instrument or the last or only endorsement on or annex thereto are declared to be the trustees of the settlement or the survivors of them shall, save as hereinafter mentioned, be bound to execute, at the cost of the trust estate, a deed declaring that they are discharged from the trust so far as regards that land: Provided that, if the trustees have notice of any derivative settlement, [F1 trust of land] or equitable charge affecting such land, they shall not execute a deed of discharge until—

(a) in the case of a derivative settlement, or [F1 trust of land], a vesting instrument or a conveyance has been executed or made for giving effect thereto; and

(b) in the case of an equitable charge, they are satisfied that the charge is or will be secured by a legal mortgage, or is protected by registration as a land charge, or by deposit of the documents of title, or that the owner thereof consents to the execution of the deed of discharge. Where the land is affected by a derivative settlement or [F1 trust of land], the deed of discharge shall contain a statement that the land is settled land by virtue of such vesting instrument as aforesaid and the trust instrument therein referred to, or is [F2 subject to a trust of land] by virtue of such conveyance as aforesaid, as the case may require.

(2) If, in the circumstances mentioned in subsection (1) of this section and when the conditions therein mentioned have been complied with, the trustees of a settlement on being requested to execute a deed of discharge—

(a) by the estate owner; or

(b) by a person interested under, or by the trustees of, a derivative settlement; or

(c) by the trustees of [F3 land]; refuse to do so, or if for any reason the discharge cannot be effected without undue delay or expense, the estate owner, person interested, or trustees may apply to the court for an order discharging the first mentioned trustees as respects the whole or any part of the settled land, and the court may make such order as it may think fit.

(3) Where a deed or order of discharge contains no statement to the contrary, a purchaser

of a legal estate in the land to which the deed or order relates shall be entitled to assume that the land has ceased to be settled land, and is not subject to [F4a trust of land].

o. 18 Restrictions on dispositions of settled land where trustees have not been discharged.

(1) Where land is the subject of a vesting instrument and the trustees of the settlement have not been discharged under this Act, then—

(a) any disposition by the tenant for life or statutory owner of the land, other than a disposition authorised by this Act or any other statute, or made in pursuance of any additional or larger powers mentioned in the vesting instrument, shall be void, except for the purpose of conveying or creating such equitable interests as he has power, in right of his equitable interests and powers under the trust instrument, to convey or create; and
(b) if any capital money is payable in respect of a transaction, a conveyance to a purchaser of the land shall only take effect under this Act if the capital money is paid to or by the direction of the trustees of the settlement or into court; and

(c) notwithstanding anything to the contrary in the vesting instrument, or the trust instrument, capital money shall not, except where the trustee is a trust corporation, be paid to or by the direction of fewer persons than two as trustees of the settlement.

(2) The restrictions imposed by this section do not affect—

(a) the right of a personal representative in whom the settled land may be vested to convey or deal with the land for the purposes of administration;

(b) the right of a person of full age who has become absolutely entitled (whether beneficially or as [F1 trustee of land] or personal representative or otherwise) to the settled land, free from all limitations, powers, and charges taking effect under the trust instrument, to require the land to be conveyed to him;

(c) the power of the tenant for life, statutory owner, or personal representative in whom the settled land is vested to transfer or create such legal estates, to take effect in priority to the settlement, as may be required for giving effect to any obligations imposed on him by statute, but where any capital money is raised or received in respect of the transaction the money shall be paid to or by the direction of the trustees of the settlement or in accordance with an order of the court.

p. 19 Who is tenant for life.

(1) The person of full age who is for the time being beneficially entitled under a settlement to possession of settled land for his life is for the purposes of this Act the tenant for life of that land and the tenant for life under that settlement.

(2) If in any case there are two or more persons of full age so entitled as joint tenants, they together constitute the tenant for life for the purposes of this Act.

(3) If in any case there are two or more persons so entitled as joint tenants and they are not all of full age, such one or more of them as is or are for the time being of full age is or (if more than one) together constitute the tenant for life for the purposes of this Act, but this subsection does not affect the beneficial interests of such of them as are not for the time being of full age.

(4) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent, and notwithstanding any assignment by operation of law or otherwise of his estate or interest under the settlement, whether before or after it came into possession, other than an assurance which extinguishes that estate or interest.

q. 30 Who are trustees for purposes of Act.

(1) Subject to the provisions of this Act, the following persons are trustees of a settlement for the purposes of this Act, and are in this Act referred to as the “trustees of the settlement” or “trustees of a settlement,” namely—

(i) the persons, if any, who are for the time being under the settlement, trustees with

power of sale of the settled land (subject or not to the consent of any person), or with power of consent to or approval of the exercise of such a power of sale, or if there are no such persons; then

(ii) the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890, or any of them, or this Act, or if there are no such persons; then

(iii) the persons, if any, who are for the time being under the settlement trustees with [F1 a power or duty to sell] of any other land comprised in the settlement and subject to the same limitations as the land to be sold or otherwise dealt with, or with power of consent to or approval of the exercise of such power of sale, or, if there are no such persons; then

(iv) the persons, if any, who are for the time being under the settlement trustees with [F2 a future power or duty to sell] the settled land, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power [F3 or duty] takes effect in all events or not, or, if there are no such persons; then

(v) the persons, if any, appointed by deed to be trustees of the settlement by all the persons who at the date of the deed were together able, by virtue of their beneficial interests or by the exercise of an equitable power, to dispose of the settled land in equity for the whole estate the subject of the settlement.

(2) Paragraphs (i) (iii) and (iv) of the last preceding subsection take effect in like manner as if the powers therein referred to had not by this Act been made exercisable by the tenant for life or statutory owner.

r. 31 As to trustees of compound settlements.

(1) Persons who are for the time being trustees for the purposes of this Act of an instrument which is a settlement, or is deemed to be a subsisting settlement for the purposes of this Act, shall be the trustees for the purposes of this Act of any settlement constituted by that instrument and any instruments subsequent in date or operation.

[F4 Where there are trustees for the purposes of this Act of the instrument under which there is a tenant for life or statutory owner but there are no trustees for those purposes of a prior instrument, being one of the instruments by which a compound settlement is constituted, those trustees shall, unless and until trustees are appointed of the prior instrument or of the compound settlement, be the trustees for the purposes of this Act of the compound settlement.]

(2) This section applies to instruments coming into operation before as well as after the commencement of this Act, but shall have effect without prejudice to any appointment made by the court before such commencement of trustees of a settlement constituted by more than one instrument, and to the power of the court in any case after such commencement to make any such appointment, and where any such appointment has been made before such commencement or is made thereafter this section shall not apply or shall cease to apply to the settlement consisting of the instruments to which the appointment relates.

s. 35 Procedure on appointment of new trustees.

(1) Whenever a new trustee for the purposes of this Act is appointed of a trust instrument or a trustee thereof for the purposes aforesaid is discharged from the trust without a new trustee being appointed, a deed shall be executed supplemental to the last or only principal vesting instrument containing a declaration that the persons therein named, being the persons who after such appointment or discharge, as the case may be, are the trustees of the trust instrument for the purposes aforesaid, are the trustees of the settlement for those purposes; and a memorandum shall be endorsed on or annexed to the last or only principal vesting instrument in accordance with the M1 Trustee Act, 1925.

(2) Every such deed as aforesaid shall, if the trustee was appointed or discharged by the court, be executed by such person as the court may direct, and, in any other case, shall be

executed by—

(i) the person, if any, named in the principal vesting instrument as the person for the time being entitled to appoint new trustees of the settlement, or if no person is so named, or the person is dead or unable or unwilling to act, the persons who if the principal vesting instrument had been the only instrument constituting the settlement would have had power to appoint new trustees thereof;

(ii) the persons named in the deed of declaration as the trustees of the settlement; and

(iii) any trustee who is discharged as aforesaid or retires.

(3) A statement contained in any such deed of declaration as is mentioned in this section to the effect that the person named in the principal vesting instrument as the person for the time being entitled to appoint new trustees of the settlement is unable or unwilling to act, or that a trustee has remained outside the United Kingdom for more than twelve months, or refuses or is unfit to act, or is incapable of acting, shall in favour of a purchaser of a legal estate be conclusive evidence of the matter stated.

t. 106 Prohibition or limitation against exercise of powers void, and provision against forfeiture.

(1) If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and partly after, the commencement of this Act a provision is inserted—

(a) purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life or statutory owner to exercise any power under this Act, or his right to require the settled land to be vested in him; or

(b) attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising or to put him into a position inconsistent with his exercising, any power under this Act, or his right to require the settled land to be vested in him; that provision, as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void.

(2) For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any such power or right as aforesaid shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power or right, discharged from liability to determination or cesser by or on his exercising the same.

(3) Notwithstanding anything in a settlement, the exercise by the tenant for life or statutory owner of any power under this Act shall not occasion a forfeiture.

u. SECOND SCHEDULE

Transitional Provisions affecting Existing Settlements

Paragraph 1

Provisions for vesting legal estate in tenant for Life or Statutory Owner

1(1) A settlement subsisting at the commencement of this Act is, for the purposes of this Act, a trust instrument.

(2) As soon as practicable after the commencement of this Act, the trustees for the purposes of this Act of every settlement of land subsisting at the commencement of this Act (whether or not the settled land is already vested in them), may and on the request of the tenant for life or statutory owner, shall at the cost of the trust estate, execute a principal vesting deed (containing the proper statements and particulars) declaring that the legal estate in the settled land shall vest or is vested in the person or persons therein named (being the tenant for life or statutory owner, and including themselves if they are

the statutory owners), and such deed shall (unless the legal estate is already so vested) operate to convey or vest the legal estate in the settled land to or in the person or persons aforesaid and, if more than one, as joint tenants.

(3) If there are no trustees of the settlement then (in default of a person able and willing to appoint such trustees), an application shall be made to the court by the tenant for life or statutory owner, or by any other person interested, for the appointment of such trustees.

(4) If default is made in the execution of any such principal vesting deed, the provisions of this Act relating to vesting orders of settled land shall apply in like manner as if the trustees of the settlement were persons in whom the settled land is wrongly vested.

(5) This paragraph does not apply where, at the commencement of this Act, settled land is held at law or in equity in undivided shares vested in possession.

(6) In the case of settlements subsisting at the commencement of this Act, all the estates, interests and powers thereby limited which are not by statute otherwise converted into equitable interests or powers, shall, as from the date of the principal vesting deed or the vesting order, take effect only in equity.

[F1 This sub-paragraph shall not apply to any legal estate or interest vested in a mortgagee or other purchaser for money or money's worth.]

(7) This paragraph does not apply where settled land is vested in personal representatives at the commencement of this Act, or where settled land becomes vested in personal representatives before a principal vesting deed has been executed pursuant to this paragraph.

(8) No ad valorem stamp duty shall be payable in respect of a vesting deed or order made for giving effect to an existing settlement.

v.

NOTICE TO FEE-SIMPLE

**** THIS NOTICE IS FOR DEMONSTRATION PURPOSES WHEN YOU FULLY UNDERSTAND ALL ASPECTS THAT MAKE UP THIS NOTICE YOU WILL HAVE THE ABILITY****

Fee-Simple in possession
1666 Cestui Que Use Street (19.Car.2.ch 6)
City,Prov
Postal Code

ATTENTION:

Fee-Simple in possession

Cover letter
Settlor to Settled Land Act sec 16⁵⁸

This cover letter is to give constructive notice to you as the one being in possession of lands⁵⁹, part of a land settlement⁶⁰. The land settlement is represented by the settled lands act⁶¹. state/province has reformed the basic land laws⁶² and can now be found in the Trust and Settlements Variations Act & Land (Settled Estates) Act of 1979. The Settled lands Act of 1925 and previous versions give more specific information on the rights and duties of the the tenant for life and who are trustees for the purpose of the Settled Land Acts and corporations⁶³, of which you should take note. This fee-simple class of person is restricted by the law of property 1925⁶⁴ and, by taking lands by purchase⁶⁵, is also accepting the rights and duties of the trustee to the Settled Lands Act, due to taking possession of lands in trust⁶⁶. The Law of Property 1925 is full notice of the trust,⁶⁷ which then brings the Trustee Act alive as well as the fiduciary duties attached to the conveyance by purchase and full notice of the trust.

As quasi trustee, I recommend you contact your lawyer or legal representative immediately, If a question arises or a doubt is entertained whether any and what legal estate ought to be transferred or created pursuant to Settled Lands Act, an application may be made to the court for directions as stated in Settled Lands Act 1925 16(1)(6).

I have sent a copy of this notice to the acting Lieutenant Governor of state/province and the Attorney General of state/province acting in right of Her Majesty the Queen⁶⁸ as required by law and equity, you can also contact the seal holder of the province to possibly assist you in order to get the actual trustee to the 1st level of use⁶⁹ determination regarding my absolute entitlement, any questions regarding the lands in trust⁷⁰ should be taken up with the aforementioned actions to make the proper determination and to protect yourself from any breaches in fiduciary duties.

You have many resources available to you in order to take into account vital information and to determine the new information received. A couple of them are, Settled Lands Act 1925 16(1)(6) and the Trustee Act as well as the Supreme Court of state/province Court Rules which give access to the courts to help assist you in determining your powers and duties as trustee to myself in accordance with the Settled Lands Act as trustee in possession of the corpus of the trust.

I would like to point out the possibility of insurance and a type of reimbursement for complying with the law and to possibly recoup some of or all the costs for improvements to the lands in trust. I also recommend looking into this although, this is additional information that does not

58Settled Lands Act 1925 pg #

59Re Alfrey Investments Ltd. and Shefsky Developments Ltd. et al., 1974 CanLII 709 pg #2

60LAND (SETTLED ESTATE) ACT R.S.B.C. 1979 pg #3

61Interpretation Act sec 44 pg #7

62law reform commission of british columbia report on the land (settled estate) act lrc99 november 1988

63Settled Lands Act 1925 sec 19 -29

64Law of Property Act 1925 pg #4

65Settled Land Act 1882 pg #5

66Settled Lands Act 1925 sec 30

67Law of Property Act 1925 & LAND (SETTLED ESTATE) ACT R.S.B.C. 1979

68Mercer v. Attorney General for Ontario, 1881 pg #6

69Statute of Uses 1535

70Chupryk (Re), 1980 CanLII 2482 (MB CA)

apply to my matter. To see if you qualify for this benefit is information for you to look into independent of my matter, and is not legal advice.

This will be my final attempt to supply vital information you are required to take into consideration. This cover letter is to give you as much constructive notice as possible due to the issues of privity of estate in accordance to law and equity for this very important and private matter before a petition is filed with the court to determine why you will not act.

If necessary an order to force you to determine and comply with the specific performance required of a trustee to the one absolutely entitled to the trust and its powers and duties attached to the subject matter of issue.

Sincerely

Settlor Name

Date: _____

Settlor Signature:

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Notice/Order
RELEASE and CONVEY
Lands and Stock to the Settlor absolutely entitled
Settlor to Settled Land Act 1925 sec 16

To: Fee-Simple in possession as quasi-trustee(s) in possession of lands held in a land settlement:

This notice is to inform you that I, Settlor Name am now terminating the *Statutory Land Settlement (The Trust)* by the Land (settled estate) Act which was created by the Act of Settlement (1700), the Settled Estates Acts and the Settled Lands Acts including the bill of Rights 1688. One should also be aware of the laws of repeal s.44(h) of the Interpretation Act⁷¹.

One hereby give notice to Fee-Simple in possession as quasi-trustee(s) to the land settlement, that Settlor Name is deforced in the strictest sense of the law and equity.

As acting trustee, in accordance with Settled Land Act 1925 sec 16(1)(ii) you are ordered to return the "lands" in accordance with the Trust and Settlements Variations Act sec 1(b) and LAND (SETTLED ESTATE) ACT 1979 sec 2, 28 & 34 and Trustee Act sec 59 and Property Law Act sec 10 as stated in the Trustee Act sec 59 within 28 calendar days.

If you do not comply to this notice a petition will be filed with the Supreme Court of state/province to show cause why you will not comply with this order⁷².

Land Titles Status : Title Certificate states; Fee-Simple in possession as the tenants in fee-simple.

This Notice states: Fee-Simple in possession as the Trustees holding possession of the corpus of the trust (lands).

This notice is from one absolutely entitled to possession and receipt of the rents and profits of the settled estate(lands & Stock) for an estate greater than a life estate to lands and hereditaments held in trust in accordance with the Trust and Settlements Variations Act sec 1(b) and LAND (SETTLED ESTATE) ACT 1979 sec 2, 28 & 34 and Trustee Act sec 59 and Property Law Act sec 10 ; Fee-Simple in possession holding possession(disseizin) of lands, keeping the Settlor Name out of Possession and True Ownership(deforcement) as the absolute Inheritance (see:13.Ed.1.Stat.1.ch.1) of Settlor Name and is an injury in common law and equity(see: Waste 20.Ed.1.stat.2.c.3).

This is an OFFICIAL- WRITTEN- NOTICE

States: Whereas Settlor Name, that I am of full age and entitled to require a legal estate in the settled land to be vested in myself Settlor Name in priority to the settlement, by reason of a statutory right of reverter as settlor with no intention to create the land trust, that my (Settlor Name) interest ought no longer to be capable of being over-reached under the powers of Settled Lands Act 1925, the estate owner shall be bound, if so requested in writing, to transfer or create such legal estate as may be required for giving legal effect to the rights of the person so entitled is absolutely entitled to possession and receipt of the rents and profits of the settled estate(lands & Stock) for an estate greater than a life estate, to lands and hereditaments, held in trust in accordance with the Trust and Settlements Variations Act sec 1(b) and LAND (SETTLED

⁷¹Interpretation Act pg #8

⁷²Settled Lands Act sec 16(6)

ESTATE) ACT 1979 sec 2, 28 & 34 and Trustee Act sec 59 and Property Law Act sec 10;

Which said Settlor Name claims to be his absolute right and inheritance.

The said Fee-Simple in possession has not entry, unless after the disseizin, and whereupon he complains that the aforesaid Fee-Simple in possession deforces him.

Therefore Settlor Name demands justly (rightly) and without delay that Fee-Simple in possession render to Settlor Name the following lands :

Legal Description and Parcel ID

Lot ! Plan !!!! District Lot !!!! Land District !!! Except Plan !!!!!

PID: !!!!!

144.461 Acres

Include map showing boundaries

Order: The Fee-Simple in possession as quasi-trustee in possession of land is to IMMEDIATELY-RELEASE and CONVEY to Settlor Name in accordance with law and equity the above stated lands **or** make petition to the Supreme Court of state/province in the inherent jurisdiction to assist you in your determination of your fiduciary duties and name Settlor Name in the petition in order to have the courts determine Settlor Name absolute right to the lands in trust. As well as to not open yourself up to claims of breach of fiduciary duties for not taking notice of these important issues one has taken the rights and duties to perform.

As settlor to the land estate in trust, I will release and indemnify you as trustee from any claim of injury once the trust is released in accordance with the trust instrument and the laws and equity.

Failure to make a determination or file a petition in the Supreme Court of state/province in accordance with the Settled Lands Act 1925 sec 16 and Trustee Act and Court Rules will result in a petition to the court to inquire why you have not taken this vital information in this notice into account for your determination, as this constructive notice states.

Due to being seized of Possession, Ownership and the fee all correspondence and replies are to be sent to mailing address and your@email.com

Kind Regards

Settlor Name

dated: _____

Settlor Signature : _____

Supporting Documents

1. Settled Land Act 1925

a. 1 What constitutes a settlement.

(1) Any deed, will, agreement for a settlement or other agreement, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, after the commencement of this Act, stands for the time being—

(i) limited in trust for any persons by way of succession; or

(ii) limited in trust for any person in possession—

(a) for an entailed interest whether or not capable of being barred or defeated;

(b) for an estate in fee simple or for a term of years absolute subject to an executory limitation, gift, or disposition over on failure of his issue or in any other event;

(c) for a base or determinable fee [F1 (other than a fee which is a fee simple absolute by virtue of section 7 of the Law of Property Act 1925)] or any corresponding interest in leasehold land;

(d) being an infant, for an estate in fee simple or for a term of years absolute; or

(iii) limited in trust for any person for an estate in fee simple or for a term of years absolute contingently on the happening of any event; or

(iv). F2

(v) charged, whether voluntarily or in consideration of marriage or by way of family arrangement, and whether immediately or after an interval, with the payment of any rentcharge for the life of any person, or any less period, or of any capital, annual, or periodical sums for the portions, advancement, maintenance, or otherwise for the benefit of any persons, with or without any terms of years for securing or raising the same; creates or is for the purposes of this Act a settlement and is in this Act referred to as a settlement, or as the settlement, as the case requires:

Provided that, where land is the subject of a compound settlement, references in this Act to the settlement shall be construed as meaning such compound settlement, unless the context otherwise requires.

(2) Where an infant is beneficially entitled to land for an estate in fee simple or for a term of years absolute and by reason of an intestacy or otherwise there is no instrument under which the interest of the infant arises or is acquired, a settlement shall be deemed to have been made by the intestate, or by the person whose interest the infant has acquired.

(3) An infant shall be deemed to be entitled in possession notwithstanding any subsisting right of dower (not assigned by metes and bounds) affecting the land, and such a right of dower shall be deemed to be an interest comprised in the subject of the settlement and coming to the dowress under or by virtue of the settlement. Where dower has been assigned by metes and bounds, the letters of administration or probate granted in respect of the estate of the husband of the dowress shall be deemed a settlement made by the husband.

(4) An estate or interest not disposed of by a settlement and remaining in or reverting to the settlor, or any person deriving title under him, is for the purposes of this Act an estate or interest comprised in the subject of the settlement and coming to the settlor or such person under or by virtue of the settlement.

(5) Where—

(a) a settlement creates an entailed interest which is incapable of being barred or defeated, or a base or determinable fee, whether or not the reversion or right of reverter is in the

Crown, or any corresponding interest in leasehold land; or
(b)the subject of a settlement is an entailed interest, or a base or determinable fee, whether or not the reversion or right of reverter is in the Crown, or any corresponding interest in leasehold land;the reversion or right of reverter upon the cesser of the interest so created or settled shall be deemed to be an interest comprised in the subject of the settlement, and limited by the settlement.
(6)Subsections (4) and (5) of this section bind the Crown.
[F3(7)This section does not apply to land held upon trust for sale.]

b. 2 What is settled land.

Land which is or is deemed to be the subject of a settlement is for the purposes of this Act settled land, and is in relation to the settlement referred to in this Act as the settled land.

c. 3 Duration of settlements.

Land [F1which has been subject to a settlement which is a settlement for the purposes of this Act] shall be deemed for the purposes of this Act to remain and be settled land, and the settlement shall be deemed to be a subsisting settlement for the purposes of this Act so long as—

- (a)any limitation, charge, or power of charging under the settlement subsists, or is capable of being exercised; or
- (b)the person who, if of full age, would be entitled as beneficial owner to have that land vested in him for a legal estate is an infant.

d. 5 Contents of vesting deeds.

(1)Every vesting deed for giving effect to a settlement or for conveying settled land to a tenant for life or statutory owner during the subsistence of the settlement (in this Act referred to as a “principal vesting deed”) shall contain the following statements and particulars, namely:—

- (a)A description, either specific or general, of the settled land;
 - (b)A statement that the settled land is vested in the person or persons to whom it is conveyed or in whom it is declared to be vested upon the trusts from time to time affecting the settled land;
 - (c)The names of the persons who are the trustees of the settlement;
 - (d)Any additional or larger powers conferred by the trust instrument relating to the settled land which by virtue of this Act operate and are exercisable as if conferred by this Act on a tenant for life;
 - (e)The name of any person for the time being entitled under the trust instrument to appoint new trustees of the settlement.
- (2)The statements or particulars required by this section may be incorporated by reference to an existing vesting instrument, and, where there is a settlement subsisting at the commencement of this Act, by reference to that settlement and to any instrument whereby land has been conveyed to the uses or upon the trusts of that settlement, but not (save as last aforesaid) by reference to a trust instrument nor by reference to a disentailing deed.
- (3)A principal vesting deed shall not be invalidated by reason only of any error in any of the statements or particulars by this Act required to be contained therein.

e. 7 Procedure on change of ownership.

(1)If, on the death of a tenant for life or statutory owner, or of the survivor of two or more tenants for life or statutory owners, in whom the settled land was vested, the land remains settled land, his personal representatives shall hold the settled land on trust, if and when

required so to do, to convey it to the person who under the trust instrument or by virtue of this Act becomes the tenant for life or statutory owner and, if more than one, as joint tenants.

(2) If a person by reason of attaining full age becomes a tenant for life for the purposes of this Act of settled land, he shall be entitled to require the trustees of the settlement, personal representatives, or other persons in whom the settled land is vested, to convey the land to him.

(3) If a person who, when of full age, will together with another person or other persons constitute the tenant for life for the purposes of this Act of settled land attains that age, he shall be entitled to require the tenant for life, trustees of the settlement, personal representatives or other persons in whom the settled land is vested to convey the land to him and the other person or persons who together with him constitute the tenant for life as joint tenants.

(4) If by reason of forfeiture, surrender, or otherwise the estate owner of any settled land ceases to have the statutory powers of a tenant for life and the land remains settled land, he shall be bound forthwith to convey the settled land to the person who under the trust instrument, or by virtue of this Act, becomes the tenant for life or statutory owner and, if more than one, as joint tenants.

(5) If any person of full age becomes absolutely entitled to the settled land (whether beneficially, or as personal representative, or as [F1 trustee of land], or otherwise) free from all limitations, powers, and charges taking effect under the settlement, he shall be entitled to require the trustees of the settlement, personal representatives, or other persons in whom the settled land is vested, to convey the land to him, and if more persons than one being of full age become so entitled to the settled land they shall be entitled to require such persons as aforesaid to convey the land to them as joint tenants.

f. 8 Mode and costs of conveyance, and saving of rights of personal representatives and equitable charges.

(1) A conveyance by personal representatives under either of the last two preceding sections may be made by an assent in writing signed by them which shall operate as a conveyance.

(2) Every conveyance under either of the last two preceding sections shall be made at the cost of the trust estate.

(3) The obligations to convey settled land imposed by the last two preceding sections are subject and without prejudice—

(a) where the settlement is created by a will, to the rights and powers of the personal representatives for purposes of administration; and

(b) in any case, to the person on whom the obligation is imposed being satisfied that provision has been or will be made for the payment of any unpaid death duties in respect of the land or any interest therein from which he is accountable, and any interest and costs in respect of such duties, or that he is otherwise effectually indemnified against such duties, interest and costs.

(4) Where the land is or remains settled land a conveyance under either of the last two preceding sections shall—

(a) if by deed, be a principal vesting deed; and

(b) if by an assent, be a vesting assent, which shall contain the like statements and particulars as are required by this Act in the case of a principal vesting deed.

(5) Nothing contained in either of the last two preceding sections affects the right of personal representatives to transfer or create such legal estates to take effect in priority to a conveyance under either of those sections as may be required for giving effect to the obligations imposed on them by statute.

(6) A conveyance under either of the last two preceding sections, if made by deed, may

contain a reservation to the person conveying of a term of years absolute in the land conveyed, upon trusts for indemnifying him against any unpaid death duties in respect of the land conveyed or any interest therein, and any interest and costs in respect of such duties.

(7) Nothing contained in either of the last two preceding sections affects any right which a person entitled to an equitable charge for securing money actually raised, and affecting the whole estate the subject of the settlement, may have to require effect to be given thereto by a legal mortgage, before the execution of a conveyance under either of those sections.

g. 9 Procedure in the case of settlements and of instruments deemed to be trust instruments.

(1) Each of the following settlements or instruments shall for the purposes of this Act be deemed to be a trust instrument, and any reference to a trust instrument contained in this Act shall apply thereto, namely:—

- (i) An instrument executed, or, in case of a will, coming into operation, after the commencement of this Act which by virtue of this Act is deemed to be a settlement;
- (ii) A settlement which by virtue of this Act is deemed to have been made by any person after the commencement of this Act;
- (iii) An instrument inter vivos intended to create a settlement of a legal estate in land which is executed after the commencement of this Act, and does not comply with the requirements of this Act with respect to the method of effecting such a settlement; and
- (iv) A settlement made after the commencement of this Act (including a settlement by the will of a person who dies after such commencement) of any of the following interests—
 - (a) an equitable interest in land which is capable, when in possession, of subsisting at law; or
 - (b) an entailed interest; or
 - (c) a base or determinable fee or any corresponding interest in leasehold land, but only if and when the interest settled takes effect free from all equitable interests and powers under every prior settlement (if any).

(2) As soon as practicable after a settlement, or an instrument which for the purposes of this Act is deemed to be a trust instrument, takes effect as such, the trustees of the settlement may, and on the request of the tenant for life or statutory owner shall, execute a principal vesting deed, containing the proper statements and particulars, declaring that the legal estate in the settled land shall vest or is vested in the person or persons therein named, being the tenant for life or statutory owner, and including themselves if they are the statutory owners, and such deed shall, unless the legal estate is already so vested, operate to convey or vest the legal estate in the settled land to or in the person or persons aforesaid and, if more than one, as joint tenants.

(3) If there are no trustees of the settlement, then (in default of a person able and willing to appoint such trustees) an application under this Act shall be made to the court for the appointment of such trustees.

(4) The provisions of the last preceding section with reference to a conveyance shall apply, so far as they are applicable, to a principal vesting deed under this section.

h. 10 Procedure on acquisition of land to be made subject to a settlement.

(1) Where after the commencement of this Act land is acquired with capital money arising under this Act or in exchange for settled land, or a rentcharge is reserved on a grant of settled land, the land shall be conveyed to, and the rentcharge shall by virtue of this Act become vested in, the tenant for life or statutory owner, and such conveyance or grant is in this Act referred to as a subsidiary vesting deed: Provided that, where an instrument is subsisting at the commencement of this Act, or is made or comes into operation after such commencement, by virtue of which any money or securities are liable under this

Act, or the Acts which it replaces, or under a trust or direction contained in the instrument, to be invested in the purchase of land to be conveyed so as to become settled land, but at the commencement of this Act, or when such instrument is made or comes into operation after such commencement, as the case may be, there is no land in respect of which a principal vesting deed is capable of being executed, the first deed after the commencement of this Act by which any land is acquired as aforesaid shall be a principal vesting deed and shall be framed accordingly.

i. 11 As to contracts for the settlement of land.

(1) A contract made or other liability created or arising after the commencement of this Act for the settlement of land—

(i) by or on the part of an estate owner; or

(ii) by a person entitled to—

(a) an equitable interest which is capable when in possession of subsisting at law; or

(b) an entailed interest; or

(c) a base or determinable fee or any corresponding interest in leasehold land; shall, but in cases under paragraph (ii) only if and when the interest of the person entitled takes effect free from all equitable interests and powers under every prior settlement, if any, be deemed an estate contract within the meaning of the M1 Land Charges Act, 1925, and may be registered as a land charge accordingly, and effect shall be given thereto by a vesting deed and a trust instrument in accordance with this Act.

(2) A contract made or other liability created or arising before the commencement of this Act to make a settlement of land shall be deemed to be sufficiently complied with if effect is given thereto by a vesting deed and a trust instrument in accordance with this Act

j. 12 Power to make vesting orders as to settled land.

(1) If—

(a) any person who is bound under this Part of this Act to execute a conveyance, vesting deed or vesting assent or in whom settled land is wrongly vested refuses or neglects to execute the requisite conveyance, vesting deed or vesting assent within one month after demand in writing; or

(b) any such person is outside the United Kingdom, or cannot be found, or it is not known whether he is alive or dead; or

(c) for any reason the court is satisfied that the conveyance, vesting deed or vesting assent cannot be executed, or cannot be executed without undue delay or expense; the court may, on the application of any person interested, make an order vesting the settled land in the tenant for life or statutory owner or person, if any, of full age absolutely entitled (whether beneficially or as personal representative or [F1 trustee of land] or otherwise), and, if the land remains settled land, the provisions of this Act relating to a principal vesting deed or a subsidiary vesting deed, as the case may be, shall apply to any order so made and every such order shall contain the like statements and particulars.

(2) No stamp duty shall be payable in respect of a vesting order made in place of a vesting or other assent.

k. 13 Dispositions not to take effect until vesting instrument is made.

Where a tenant for life or statutory owner has become entitled to have a principal vesting deed or a vesting assent executed in his favour, then until a vesting instrument is executed or made pursuant to this Act in respect of the settled land, any purported disposition thereof inter vivos by any person, other than a personal representative (not being a disposition which he has power to make in right of his equitable interests or powers under a trust instrument), shall not take effect except in favour of a purchaser of a legal estate [F1] without notice of such tenant for life or statutory owner having become so entitled as

aforesaid.] but, save as aforesaid, shall operate only as a contract for valuable consideration to carry out the transaction after the requisite vesting instrument has been executed or made, and a purchaser of a legal estate shall not be concerned with such disposition unless the contract is registered as a land charge. [F2Nothing in this section affects the creation or transfer of a legal estate by virtue of an order of the court or the Minister or other competent authority.]

l. 16 Enforcement of equitable interests and powers against estate owner.

(1) All equitable interests and powers in or over settled land (whether created before or after the date of any vesting instrument affecting the legal estate) shall be enforceable against the estate owner in whom the settled land is vested (but in the case of personal representatives without prejudice to their rights and powers for purposes of administration) in manner following (that is to say):—

(i) The estate owner shall stand possessed of the settled land and the income thereof upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the equitable interests and powers affecting the settled land or the income thereof of which he has notice according to their respective priorities;

(ii) Where any person of full age becomes entitled to require a legal estate in the settled land to be vested in him in priority to the settlement, by reason of a right of reverter, statutory or otherwise, or an equitable right of entry taking effect, or on the ground that his interest ought no longer to be capable of being over-reached under the powers of this Act, the estate owner shall be bound, if so requested in writing, to transfer or create such legal estate as may be required for giving legal effect to the rights of the person so entitled;

(iii) Where—

(a) any principal sum is required to be raised on the security of the settled land, by virtue of any trust, or by reason of the exercise of an equitable power affecting the settled land, or by any person or persons who under the settlement is or are entitled or together entitled to or has or have a general power of appointment over the settled land, whether subject to any equitable charges or powers of charging subsisting under the settlement or not; or

(b) the settled land is subject to any equitable charge for securing money actually raised and affecting the whole estate the subject of the settlement; the estate owner shall be bound, if so requested in writing, to create such legal estate or charge by way of legal mortgage as may be required for raising the money or giving legal effect to the equitable charge:

(5) Save as hereinbefore expressly provided, no legal estate shall, so long as the settlement is subsisting, be transferred or created by the estate owner for giving effect to any equitable interest or power under the settlement.

(6) If a question arises or a doubt is entertained whether any and what legal estate ought to be transferred or created pursuant to this section, an application may be made to the court for directions as hereinafter provided.

(7) If an estate owner refuses or neglects for one month after demand in writing to transfer or create any such legal estate, or if by reason of his being outside the United Kingdom, or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the transaction cannot otherwise be effected, or cannot be effected without undue delay or expense, the court may, on the application of any person interested, make a vesting order transferring or creating the requisite legal estate.

m. 17 Deed of discharge on termination of settlement.

(1) Where the estate owner of any settled land holds the land free from all equitable interests and powers under a trust instrument, the persons who in the last or only

principal vesting instrument or the last or only endorsement on or annex thereto are declared to be the trustees of the settlement or the survivors of them shall, save as hereinafter mentioned, be bound to execute, at the cost of the trust estate, a deed declaring that they are discharged from the trust so far as regards that land: Provided that, if the trustees have notice of any derivative settlement, [F1 trust of land] or equitable charge affecting such land, they shall not execute a deed of discharge until—

(a) in the case of a derivative settlement, or [F1 trust of land], a vesting instrument or a conveyance has been executed or made for giving effect thereto; and
(b) in the case of an equitable charge, they are satisfied that the charge is or will be secured by a legal mortgage, or is protected by registration as a land charge, or by deposit of the documents of title, or that the owner thereof consents to the execution of the deed of discharge. Where the land is affected by a derivative settlement or [F1 trust of land], the deed of discharge shall contain a statement that the land is settled land by virtue of such vesting instrument as aforesaid and the trust instrument therein referred to, or is [F2 subject to a trust of land] by virtue of such conveyance as aforesaid, as the case may require.

(2) If, in the circumstances mentioned in subsection (1) of this section and when the conditions therein mentioned have been complied with, the trustees of a settlement on being requested to execute a deed of discharge—

(a) by the estate owner; or

(b) by a person interested under, or by the trustees of, a derivative settlement; or

(c) by the trustees of [F3 land]; refuse to do so, or if for any reason the discharge cannot be effected without undue delay or expense, the estate owner, person interested, or trustees may apply to the court for an order discharging the first mentioned trustees as respects the whole or any part of the settled land, and the court may make such order as it may think fit.

(3) Where a deed or order of discharge contains no statement to the contrary, a purchaser of a legal estate in the land to which the deed or order relates shall be entitled to assume that the land has ceased to be settled land, and is not subject to [F4a trust of land].

n. 18 Restrictions on dispositions of settled land where trustees have not been discharged.

(1) Where land is the subject of a vesting instrument and the trustees of the settlement have not been discharged under this Act, then—

(a) any disposition by the tenant for life or statutory owner of the land, other than a disposition authorised by this Act or any other statute, or made in pursuance of any additional or larger powers mentioned in the vesting instrument, shall be void, except for the purpose of conveying or creating such equitable interests as he has power, in right of his equitable interests and powers under the trust instrument, to convey or create; and

(b) if any capital money is payable in respect of a transaction, a conveyance to a purchaser of the land shall only take effect under this Act if the capital money is paid to or by the direction of the trustees of the settlement or into court; and

(c) notwithstanding anything to the contrary in the vesting instrument, or the trust instrument, capital money shall not, except where the trustee is a trust corporation, be paid to or by the direction of fewer persons than two as trustees of the settlement.

(2) The restrictions imposed by this section do not affect—

(a) the right of a personal representative in whom the settled land may be vested to convey or deal with the land for the purposes of administration;

(b) the right of a person of full age who has become absolutely entitled (whether beneficially or as [F1 trustee of land] or personal representative or otherwise) to the settled land, free from all limitations, powers, and charges taking effect under the trust instrument, to require the land to be conveyed to him;

(c) the power of the tenant for life, statutory owner, or personal representative in whom the settled land is vested to transfer or create such legal estates, to take effect in priority to the settlement, as may be required for giving effect to any obligations imposed on him by statute, but where any capital money is raised or received in respect of the transaction the money shall be paid to or by the direction of the trustees of the settlement or in accordance with an order of the court.

o. 19 Who is tenant for life.

(1) The person of full age who is for the time being beneficially entitled under a settlement to possession of settled land for his life is for the purposes of this Act the tenant for life of that land and the tenant for life under that settlement.

(2) If in any case there are two or more persons of full age so entitled as joint tenants, they together constitute the tenant for life for the purposes of this Act.

(3) If in any case there are two or more persons so entitled as joint tenants and they are not all of full age, such one or more of them as is or are for the time being of full age is or (if more than one) together constitute the tenant for life for the purposes of this Act, but this subsection does not affect the beneficial interests of such of them as are not for the time being of full age.

(4) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent, and notwithstanding any assignment by operation of law or otherwise of his estate or interest under the settlement, whether before or after it came into possession, other than an assurance which extinguishes that estate or interest.

p. 30 Who are trustees for purposes of Act.

(1) Subject to the provisions of this Act, the following persons are trustees of a settlement for the purposes of this Act, and are in this Act referred to as the “trustees of the settlement” or “trustees of a settlement,” namely—

(i) the persons, if any, who are for the time being under the settlement, trustees with power of sale of the settled land (subject or not to the consent of any person), or with power of consent to or approval of the exercise of such a power of sale, or if there are no such persons; then

(ii) the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890, or any of them, or this Act, or if there are no such persons; then

(iii) the persons, if any, who are for the time being under the settlement trustees with [F1a power or duty to sell] of any other land comprised in the settlement and subject to the same limitations as the land to be sold or otherwise dealt with, or with power of consent to or approval of the exercise of such power of sale, or, if there are no such persons; then

(iv) the persons, if any, who are for the time being under the settlement trustees with [F2a future power or duty to sell] the settled land, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power [F3or duty] takes effect in all events or not, or, if there are no such persons; then

(v) the persons, if any, appointed by deed to be trustees of the settlement by all the persons who at the date of the deed were together able, by virtue of their beneficial interests or by the exercise of an equitable power, to dispose of the settled land in equity for the whole estate the subject of the settlement.

(2) Paragraphs (i) (iii) and (iv) of the last preceding subsection take effect in like manner as if the powers therein referred to had not by this Act been made exercisable by the tenant for life or statutory owner.

q. 31 As to trustees of compound settlements.

(1) Persons who are for the time being trustees for the purposes of this Act of an instrument which is a settlement, or is deemed to be a subsisting settlement for the purposes of this Act, shall be the trustees for the purposes of this Act of any settlement constituted by that instrument and any instruments subsequent in date or operation.

[F4Where there are trustees for the purposes of this Act of the instrument under which there is a tenant for life or statutory owner but there are no trustees for those purposes of a prior instrument, being one of the instruments by which a compound settlement is constituted, those trustees shall, unless and until trustees are appointed of the prior instrument or of the compound settlement, be the trustees for the purposes of this Act of the compound settlement.]

(2) This section applies to instruments coming into operation before as well as after the commencement of this Act, but shall have effect without prejudice to any appointment made by the court before such commencement of trustees of a settlement constituted by more than one instrument, and to the power of the court in any case after such commencement to make any such appointment, and where any such appointment has been made before such commencement or is made thereafter this section shall not apply or shall cease to apply to the settlement consisting of the instruments to which the appointment relates.

r. 35 Procedure on appointment of new trustees.

(1) Whenever a new trustee for the purposes of this Act is appointed of a trust instrument or a trustee thereof for the purposes aforesaid is discharged from the trust without a new trustee being appointed, a deed shall be executed supplemental to the last or only principal vesting instrument containing a declaration that the persons therein named, being the persons who after such appointment or discharge, as the case may be, are the trustees of the trust instrument for the purposes aforesaid, are the trustees of the settlement for those purposes; and a memorandum shall be endorsed on or annexed to the last or only principal vesting instrument in accordance with the M1 Trustee Act, 1925.

(2) Every such deed as aforesaid shall, if the trustee was appointed or discharged by the court, be executed by such person as the court may direct, and, in any other case, shall be executed by—

(i) the person, if any, named in the principal vesting instrument as the person for the time being entitled to appoint new trustees of the settlement, or if no person is so named, or the person is dead or unable or unwilling to act, the persons who if the principal vesting instrument had been the only instrument constituting the settlement would have had power to appoint new trustees thereof;

(ii) the persons named in the deed of declaration as the trustees of the settlement; and

(iii) any trustee who is discharged as aforesaid or retires.

(3) A statement contained in any such deed of declaration as is mentioned in this section to the effect that the person named in the principal vesting instrument as the person for the time being entitled to appoint new trustees of the settlement is unable or unwilling to act, or that a trustee has remained outside the United Kingdom for more than twelve months, or refuses or is unfit to act, or is incapable of acting, shall in favour of a purchaser of a legal estate be conclusive evidence of the matter stated.

s. 106 Prohibition or limitation against exercise of powers void

Prohibition or limitation against exercise of powers void, and provision against forfeiture.

(1) If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and partly after, the commencement of this Act a provision is

inserted—

(a)purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life or statutory owner to exercise any power under this Act, or his right to require the settled land to be vested in him; or

(b)attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising or to put him into a position inconsistent with his exercising, any power under this Act, or his right to require the settled land to be vested in him;that provision, as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void.

(2)For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any such power or right as aforesaid shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power or right, discharged from liability to determination or cesser by or on his exercising the same.

(3)Notwithstanding anything in a settlement, the exercise by the tenant for life or statutory owner of any power under this Act shall not occasion a forfeiture.

t. SECOND SCHEDULE Transitional Provisions

Transitional Provisions affecting Existing Settlements

Paragraph 1

Provisions for vesting legal estate in tenant for Life or Statutory Owner

1(1)A settlement subsisting at the commencement of this Act is, for the purposes of this Act, a trust instrument.

(2)As soon as practicable after the commencement of this Act, the trustees for the purposes of this Act of every settlement of land subsisting at the commencement of this Act (whether or not the settled land is already vested in them), may and on the request of the tenant for life or statutory owner, shall at the cost of the trust estate, execute a principal vesting deed (containing the proper statements and particulars) declaring that the legal estate in the settled land shall vest or is vested in the person or persons therein named (being the tenant for life or statutory owner, and including themselves if they are the statutory owners), and such deed shall (unless the legal estate is already so vested) operate to convey or vest the legal estate in the settled land to or in the person or persons aforesaid and, if more than one, as joint tenants.

(3)If there are no trustees of the settlement then (in default of a person able and willing to appoint such trustees), an application shall be made to the court by the tenant for life or statutory owner, or by any other person interested, for the appointment of such trustees.

(4)If default is made in the execution of any such principal vesting deed, the provisions of this Act relating to vesting orders of settled land shall apply in like manner as if the trustees of the settlement were persons in whom the settled land is wrongly vested.

(5)This paragraph does not apply where, at the commencement of this Act, settled land is held at law or in equity in undivided shares vested in possession.

(6)In the case of settlements subsisting at the commencement of this Act, all the estates, interests and powers thereby limited which are not by statute otherwise converted into

equitable interests or powers, shall, as from the date of the principal vesting deed or the vesting order, take effect only in equity.

[F1This sub-paragraph shall not apply to any legal estate or interest vested in a mortgagee or other purchaser for money or money's worth.]

(7)This paragraph does not apply where settled land is vested in personal representatives at the commencement of this Act, or where settled land becomes vested in personal representatives before a principal vesting deed has been executed pursuant to this paragraph.

(8)No ad valorem stamp duty shall be payable in respect of a vesting deed or order made for giving effect to an existing settlement.

u.

2. Re Alfrey Investments Ltd. and Shefsky Developments Ltd. et al., 1974 CanLII 709 (ON SC)

Extinguishment of Owner's Title.**** A person in possession of land in the assumed character of owner, and exercising possibly the ordinary rights of ownership****, has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by process of law within the period prescribed by the provisions of The Statute of Limitations applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title. The Statute of Limitations is a law of extinctive, not of acquisitive prescription. It operates to bar the owner out of possession, not to confer title on the trespasser or disseisor in possession.

3. LAND (SETTLED ESTATE) ACT R.S.B.C. 1979, CHAPTER 215

a. Interpretation

1. In this Act

“court” means the Supreme Court;

“settled estates” means all interests in land which are the subject of a settlement; and for the purpose of this Act an entailed interest after the possibility of issue is extinct is deemed a tenancy for life;

“settlement” means an Act of Parliament or of the Legislature, or a deed, agreement, will or other instrument, under which an interest in land stands limited to or in trust for any persons by way of succession, and includes an instrument that affects the estate of any of those persons exclusively.

b. Estates in remainder or reversion

2. An estate or interest in remainder or reversion not disposed of by the settlement and reverting to a settlor or descending to heir of testator, is deemed an estate coming to that settlor or heir under the settlement.

c. Rules for determining settled estates

3. In determining what is a settled estate under this Act, the court shall be governed by the state of facts, and by the trusts or limitations of the settlement at the time of the settlement taking effect.

d. Land of infants

4. Where an infant in his own right is seised of or entitled to land of an estate in fee simple, or any smaller estate, the land is deemed a settled estate, the land is deemed a settled estate under this Act.

e. Application to exercise powers conferred by this Act

28. A person entitled to possession or receipt of the rents and profits of a settled estate for a term of years determinable on his death, or for an estate for life or a greater estate, and also a person entitled to possession or receipt of the rents and profits of a settled estate as assignee of a person who, but for the assignment, would be entitled to the estate for a term of years determinable with any life, or for an estate for any life or a greater estate, may apply to the court by petition in a summary way to exercise the powers conferred by this Act.

f. Notice of application and service

34. Notice of an application to the court under this Act shall be served on all trustees who are seised or possessed of an estate in trust for a person whose consent to the application is required, and on any other parties who in the opinion of the court ought to be served, unless the court thinks fit to dispense with that notice.

g. Rules and orders

46. General rules and orders of court for carrying out the purposes of this Act, and for regulating the procedure and practice of the court to which this Act relates, and for regulating the fees payable to the Crown, and the fees and allowances to all officers and solicitors of the court for these matters, shall be made by the Lieutenant Governor in Council, and until rules and orders are expressly made the rules and orders of the court apply to proceedings under this Act. When there are no rules distinctly applicable to a particular proceeding, then those rules and orders shall be followed as closely as the case permits.

h. Rules and orders to be laid before Parliament

47. All general rules and orders made as stated above shall be laid before the Legislative Assembly within 15 days after they are made, if the Legislative Assembly is sitting, or, if not, within 15 days after the commencement of the next ensuing session

4. Law of Property Act 1925

a. General Principles as to Legal Estates, Equitable Interests and Powers

1 Legal estates and equitable interests.

(1) The only estates in land which are capable of subsisting or of being conveyed or created at law are—

(a) An estate in fee simple absolute in possession;

(b) A term of years absolute.

(2) The only interests or charges in or over land which are capable of subsisting or of being conveyed or created at law are—

(a) An easement, right, or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute;

(b) A rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute;

(c) A charge by way of legal mortgage;

(d) F1 and any other similar charge on land which is not created by an instrument;

(e) Rights of entry exercisable over or in respect of a legal term of years absolute, or annexed, for any purpose, to a legal rentcharge.

(3) All other estates, interests, and charges in or over land take effect as equitable interests.

(4) The estates, interests, and charges which under this section are authorised to subsist or to be conveyed or created at law are (when subsisting or conveyed or created at law) in this Act referred to as “legal estates,” and have the same incidents as legal estates subsisting at the commencement of this Act; and the owner of a legal estate is referred to as “an estate owner” and his legal estate is referred to as his estate.

(5) A legal estate may subsist concurrently with or subject to any other legal estate in the same land in like manner as it could have done before the commencement of this Act.

(6) A legal estate is not capable of subsisting or of being created in an undivided share in land or of being held by an infant.

(7) Every power of appointment over, or power to convey or charge land or any interest therein, whether created by a statute or other instrument or implied by law, and whether created before or after the commencement of this Act (not being a power vested in a legal mortgagee or an estate owner in right of his estate and exercisable by him or by another person in his name and on his behalf), operates only in equity.

(8) Estates, interests, and charges in or over land which are not legal estates are in this Act referred to as “equitable interests,” and powers which by this Act are to operate in equity only are in this Act referred to as “equitable powers.”

(9) The provisions in any statute or other instrument requiring land to be conveyed to uses shall take effect as directions that the land shall (subject to creating or reserving thereout any legal estate authorised by this Act which may be required) be conveyed to a person of full age upon the requisite trusts.

(10) The repeal of the Statute of Uses (as amended) does not affect the operation thereof in regard to dealings taking effect before the commencement of this Act.

5. Settled Land Act 1882

a. 1882 CHAPTER 38 45 and 46 Vict

[F1[F2An Act for facilitating sales, leases, and other dispositions of settled land, and for promoting the execution of improvements thereon.]]

6. Mercer v. Attorney General for Ontario, 1881 CanLII 6 (SCC)

a. The sovereign chosen by society holds the land in trust for the people, as a fidei commissum.

(Blacks law 9th edition : fideicommissum: from brevity, the fideicommissum will here be called “the trust”, the person upon whom it was imposed (fiduciarius) 'the trustee', and the person in whose favor it was imposed (fideicommissarius) the “beneficiary”.

Fideicommissarius: See Cestuequi Trust.

Cestuequi Trust: One who possesses equitable rights in property.

Cestque vie: The person whose life measures the duration of trust, gift, estate, or insurance contract.)

b. (701-2)...It was admitted by the learned counsel who represented the provinces in the

argument before us, that this was true with respect to all matters of legislation, but it was contended that when the Act (Const. 1867) deals with “property” the rule was inverted and that the provinces take “all property” not by the Act in precise terms given to the Dominion.

The sole foundation for this contention appears to me to be based upon an assumption which in my judgment is altogether ERRONEOUS, namely, that the BNA Act, transfers as it were the legal estate in the Crown property from the Crown and vests it in the Dominion and the provinces respectively as corporations capable of holding property, real and personal, to them, their successors and assigns forever, BUT THE ACT CONTEMPLATES NO SUCH THING.

7. Chupryk (Re), 1980 CanLII 2482 (MB CA)

This is a valuable power that was introduced in 1925. A tenant for life may spend existing capital money on carrying out any .of the improvements authorized by the Act, but he had no power under the old Settled Land Acts to borrow new money on mortgage for the purpose, though he could raise a loan under the Improvement of Land Acts with the approval of the Ministry of Agriculture and Fisheries.

The Act of 1882 was amended in small particulars by further statutes passed in 1884, 1887, 1889, and 1890, but its policy has stood the test of time, and though it has now been repealed and replaced by the Settled Land Act 1925, its general principles still continue to govern the rights and the liabilities of a tenant for life under a strict settlement.

8. Interpretation Act

- a. 44. Where an enactment, in this section called the “former enactment”, is repealed and another enactment, in this section called the “new enactment”, is substituted therefor,

(h) any reference in an unrepealed enactment to the former enactment shall, with respect to a subsequent transaction, matter or thing, be read and construed as a reference to the provisions of the new enactment relating to the same subject-matter as the former enactment, but where there are no provisions in the new enactment relating to the same subject-matter, the former enactment shall be read as unrepealed in so far as is necessary to maintain or give effect to the unrepealed enactment.[emphasis added]

ADDITIONAL INFORMATION

Writ of entry sur disseisin in the post

Blackstone

commentaries

appendix

c

N^o. V.

*A common RECOVERY of Lands, with * double Voucher.*

§. 1. *Writ of Entry sur Disseisin in the Post; or, PRAECIFE.*

G E O R G E the second by the grace of God of Great Britain, France, and Ireland king, defender of the faith, and so forth; to the sheriff of Norfolk, greeting. **Command** David Edwards, esquire, that justly and without delay he render to Francis Golding, clerk, two messuages, two gardens, three hundred acres of land, one hundred acres of meadow, two hundred acres of pasture, and fifty acres of wood, with the appurtenances, in Dale, which he claims to be his right and inheritance, and into which the said David hath not entry, unless after the disseisin, which Hugh Hunt thereof unjustly, and without judgment, hath made to the aforesaid Francis, within thirty years now last past, as he saith, and whereupon he complains that the aforesaid David deforceth him. And unless he shall so do, and if the said Francis shall give you security of prosecuting his claim, then summon by good summoners the said David, that he appear before our justices at Westminster, on the octave of saint Martin, to shew wherefore he hath not done it: and have you there the summoners, and this writ. **Witness** ourself at Westminster, the twenty ninth day of October, in the twenty first year of our reign.

Pledges of { John Doe.
prosecution, { Richard Roe.

Summoners of the { John Den. Sheriff's return.
withinnamed David, { Richard Fen.

Supporting Documents for this chapter:

- 20 A. Control of Property by the Dead
- 20 B. Control of Property by the Dead 2
- 20 C. THE ELEMENTS OF THE LAW OF TRUSTS
- 20 E. Coke upon Littleton